

Case No. 83214

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION, A
NATIONAL ASSOCIATION,
Respondent.

Electronically Filed
Nov 30 2021 04:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JESICA PETERSEN, District Judge
District Court Case No. A-13-692304-C

APPELLANT APPENDIX VOLUME 1

Respectfully submitted by:

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ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
11	47	10/29/2020	136 Nev., Advance Opinion Reversed and Remanded with Instructions	AA_2591
1	4	03/20/2014	Amended Answer, Counterclaim and Cross-Claim	AA_0027
1	10	03/09/2016	Amended Complaint	AA_0177
11	42	07/14/2019	Amended Respondent's Answering Brief	AA_2437
1	7	08/11/2015	Answer to Amended Counterclaim	AA_0141
1	3	03/18/2014	Answer, Counterclaim and Cross-Claim	AA_0013
10	38	04/12/2019	Appellant's Opening Brief	AA_2191
11	43	09/11/2019	Appellant's Reply Brief	AA_2506
11	49	01/13/2021	Appellant's Response to Motion to Stay Remittitur	AA_2612
12	52	02/26/2021	Appellant's Response to Notice of Supplemental Authorities in Support of SFR's Motion to Stay	AA_2643
11	46	09/24/2020	Appellant's Supplemental Responsive Brief	AA_2572
10	39	04/19/2019	Brief of Amicus Curiae Federal Housing Finance Agency in Support of Appellant and Reversal of the District Court's Judgment	AA_2272
12	56	07/09/2021	Case Appeal Statement	AA_2747
1	1	11/27/2013	Complaint	AA_0001
1	12	04/21/2016	Excerpt of Deposition of Susan Lyn Newby	AA_0200
10	35	08/15/2018	Findings of Fact and Conclusions of Law and Judgment in Favor of SFR Investments Pool 1, LLC	AA_2175

1	13	05/06/2016	JPMorgan Chase Bank N.A.'s First Supplement to N.R.C.P. 16.1 Disclosures	AA_0212
3	13	Cont.	JPMorgan Chase Bank N.A.'s First Supplement..	AA_0481
4	13	Cont.	JPMorgan Chase Bank N.A.'s First Supplement..	AA_0721
2	13	Cont.	JPMorgan Chase Bank N.A.'s First Supplement...	AA_0241
9	32	05/25/2018	JPMorgan Chase Bank N.A.'s Reply in Support of Motion for Summary Judgment	AA_2077
7	27	04/13/2018	JPMorgan Chase Bank, N.A.'s Appendix of Exhibits to Motion for Summary Judgment	AA_1499
8	27	Cont.	JPMorgan Chase Bank, N.A.'s Appendix of...	AA_1681
9	27	Cont.	JPMorgan Chase Bank, N.A.'s Appendix of...	AA_1921
5	16	07/26/2016	JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment	AA_1173
7	26	04/13/2018	JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment	AA_1473
6	16	Cont.	JPMorgan Chase Bank, N.A.'s Motion for...	AA_1201
9	29	05/04/2018	JPMorgan Chase Bank, N.A.'s Opposition to SFR's Motion for Summary Judgment	AA_2033
1	5	03/31/2014	JPMorgan Chase Bank's Motion for Summary Judgment	AA_0039
12	55	06/09/2021	Judgment in Favor of JPMorgan Chase Bank, National Association	AA_2738
1	8	02/02/2016	Motion for Leave to Amend Complaint	AA_0153
6	22	01/23/2018	Motion to Extend Discovery Deadlines and to Re-Set Trial Date (Second Request)	AA_1347
11	48	01/06/2021	Motion to Stay Issuance of Remittitur	AA_2605
6	21	09/16/2016	Notice of Appeal	AA_1343
12	57	07/09/2021	Notice of Appeal	AA_2753

11	51	02/11/2021	Notice of Supplemental Authorities in Support of Motion to Stay	AA_2635
12	51	Cont.	Notice of Supplemental Authorities in Support...	AA_2641
6	24	02/01/2018	Notice of Withdrawal of Motion to Extend Discovery Deadlines and to Re-Set Trial Date	AA_1387
1	9	03/08/2016	Order Granting Motion for Leave to Amend the Complaint	AA_0174
12	53	03/19/2021	Order Granting Motion to Stay Remittitur	AA_2731
6	20	08/23/2016	Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	AA_1332
6	17	07/26/2016	Plaintiff JPMorgan Chase Bank, N.A.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	AA_1208
12	54	05/18/2021	Remittitur	AA_2735
11	50	01/20/2021	Reply in Support of Motion to Stay Issuance of Remittitur	AA_2627
9	34	06/05/2018	Reporter's Transcript of Proceedings	AA_2149
10	35	Cont.	Reporter's Transcript of Proceedings	AA_2161
10	41	07/12/2019	Respondent's Answering Brief	AA_2374
11	41	Cont.	Respondent's Answering Brief	AA_2401
10	40	07/12/2019	Respondent's Supplemental Appendix	AA_2300
11	44	08/20/2020	Response to Request to Supplement Briefing	AA_2547
1	6	06/29/2015	Scheduling Order	AA_0137
1	11	03/23/2016	SFR Investments Pool 1, LLC's Answer to Amended Complaint	AA_0189
5	15	07/07/2016	SFR Investments Pool 1, LLC's Motion for Summary Judgment	AA_0963
6	25	03/28/2018	SFR Investments Pool 1, LLC's Motion for Summary Judgment	AA_1391

9	28	04/13/2018	SFR Investments Pool 1, LLC's Motion for Summary Judgment	AA_1953
7	25	Cont.	SFR Investments Pool 1, LLC's Motion for...	AA_1441
9	30	05/04/2018	SFR Investments Pool 1, LLC's Opposition to JPMorgan Chase Bank N.A.'s Motion for Summary Judgment and Countermotion to Strike	AA_2048
6	19	08/12/2016	SFR Investments Pool 1, LLC's Opposition to JPMorgan Chase Bank, National Association's Motion for Summary Judgment	AA_1313
6	23	01/30/2018	SFR Investments Pool 1, LLC's Opposition to Plaintiff's Motion to Extend	AA_1355
9	33	05/29/2018	SFR Investments Pool 1, LLC's Reply in Support of Counter-Motion to Strike	AA_2143
6	18	08/01/2016	SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment	AA_1240
9	31	05/18/2018	SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment	AA_2069
11	45	09/17/2020	SFR Investments Pool 1, LLC's Supplemental Brief in Response to Notice of Supplemental Authorities	AA_2553
10	36	02/06/2019	Stipulation and Order	AA_2182
10	37	02/12/2019	Stipulation and Order Dismissing Third Cause of Action (Unjust Enrichment) With Prejudice	AA_2187
4	14	06/28/2016	Stipulation and Order to Extend Discovery Deadlines (First Request)	AA_0958
5	14	Cont.	Stipulation and Order to Extend Discovery...	AA_961
1	2	03/11/2014	Summons	AA_0009

CHRONOLOGICAL INDEX

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1	1	11/27/2013	Complaint	AA_0001
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6	19	08/12/2016	SFR Investments Pool 1, LLC's Opposition to JPMorgan Chase Bank, National Association's Motion for Summary Judgment	AA_1313
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6	25	03/28/2018	SFR Investments Pool 1, LLC's Motion for Summary Judgment	AA_1391
7	25	Cont.	SFR Investments Pool 1, LLC's Motion for...	AA_1441
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12	55	06/09/2021	Judgment in Favor of JPMorgan Chase Bank, National Association	AA_2738
12	56	07/09/2021	Case Appeal Statement	AA_2747
12	57	07/09/2021	Notice of Appeal	AA_2753

TAB 1

I. Party Information

Plaintiff(s) (Name/Address/Phone): JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association Attorney (name/address/phone): TIFFANY & BOSCO, P.A. Gregory L. Wilde, Esq. Kevin S. Soderstrom, Esq. 212 South Jones Boulevard Las Vegas, Nevada 89107 Telephone: (702) 258-8200	Defendant(s) (Name/Address/Phone): SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; DOES 1 through 10 and ROE BUSINESS ENTITES 1 through 10, inclusive Attorney (name/address/phone):
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II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate) ☐ **Arbitration Requested**

Civil Cases		
Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker’s Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor’s Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

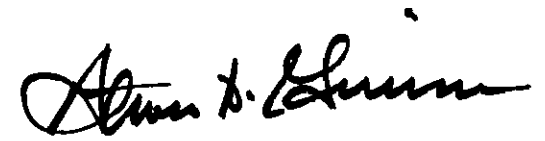
<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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/s/ Kevin S. Soderstrom

November 27, 2013

Date

Signature of initiating party or representative


CLERK OF THE COURT

GREGORY L. WILDE, ESQ.
Nevada Bar No. 4417
KEVIN S. SODERSTROM, ESQ.
Nevada Bar No. 10235
TIFFANY & BOSCO, P.A.
212 South Jones Blvd.
Las Vegas, Nevada 89107
(702) 258-8200
Attorney for Plaintiff
JPMorgan Chase Bank, National Association
13-73960

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

Defendants.

Case No.: A- 13 - 692304 - C
Dept. No.:

XVI I I

COMPLAINT

COMES NOW Plaintiff JPMorgan Chase Bank, National Association (hereinafter the "Plaintiff" or "Chase"), by and through its counsel of record, Gregory L. Wilde, Esq. of the law firm of Tiffany & Bosco, P.A., and complains and avers of the Defendants as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an entity properly conducting business which holds a note and deed of trust encumbering certain real property located at 3263 Morning Springs Drive, Henderson, Nevada, Assessor's Parcel Number 177-24-514-043 (hereinafter the "Subject Property") in Clark County, Nevada.

1 2. Plaintiff is a national association whose principal place of business is
2 located in New York, New York.

3 3. Defendant SFR Investments Pool 1, LLC (hereinafter “SFR” or the
4 “Defendant”) is a Nevada limited liability company whose principal place of business,
5 upon information and belief, is located in Las Vegas, Nevada.
6

7 4. Robert M. Hawkins and Christine V. Hawkins (hereinafter collectively the
8 “Borrowers”) are not named parties in this matter, were the borrowers on the
9 aforementioned debt, were previous owners of the Subject Property, and are detailed
10 herein only for informational purposes.
11

12 5. The Defendants DOES 1 through 10 and ROE BUSINESS ENTITIES 1
13 through 10 set forth herein are persons or business entities currently unknown to Plaintiff
14 who may have a claim to any interest in the subject matter of this action, whose true
15 name(s) is (are) unknown to Plaintiff, and who are believed to be responsible for the
16 events and happenings referred to in this Complaint, causing injuries and damages to
17 Plaintiff, or who are otherwise interested in the subject matter of this Complaint. At such
18 time when the names of said DOES and ROE BUSINESS ENTITIES have been
19 ascertained, Plaintiff will request leave from the court to insert their true names and
20 capacities and adjoin them in this action so that the Complaint will be amended to include
21 the appropriate names of said DOES and ROE BUSINESS ENTITIES.
22
23

24 6. The claims set forth in this Complaint pertain to a purported sale of real
25 property situated in Clark County, Nevada.

26 7. Jurisdiction is obtained and venue is properly set in the Eighth Judicial
27 District Court for the State of Nevada.
28

GENERAL ALLEGATIONS

8. On or about June 7, 2006, the Borrowers signed a note and deed of trust, borrowing \$240,000.00 against the Subject Property.

9. The deed of trust securing the \$240,000.00 loan was recorded with the Clark County Recorder on June 12, 2006 as Book and Instrument No. 20060612-0003526.

10. Plaintiff is the lender and beneficiary under the \$240,000.00 promissory note and corresponding deed of trust.

11. Sometime after signing the note and deed of trust the Borrowers allegedly fell behind in the payment of homeowners association assessments causing their homeowners association, upon information and belief, to record a lien against the Subject Property and later initiate foreclosure proceedings.

12. Nevada Association Services, Inc., as agent for Pebble Canyon HOA, purportedly conducted a foreclosure sale on the Subject Property wherein Defendant SFR bid \$3,700.00 and became the titled owner on March 1, 2013.

13. The Borrowers are in default on their monthly payments owed to the lender on the \$240,000.00 loan.

14. Plaintiff believes and asserts that Defendant is taking the position that Plaintiff's security interest, namely the deed of trust securing the note, has been abrogated by the homeowners association foreclosure sale.

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FIRST CAUSE OF ACTION

(Declaratory Relief)

15. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 14 and incorporates the same as though fully set forth herein.

16. A true and justiciable controversy exists between Plaintiff and Defendants concerning their interests in the Subject Property.

17. Plaintiff's interests are adverse to those of Defendants.

18. Plaintiff's rights, status, and claims in relation to those of Defendants in the Subject Property are affected by multiple statutes and relevant case law regarding real estate and lien priority.

19. This matter is filed, in part, under the Uniform Declaratory Judgment Act.

20. Pursuant to NRS 30.040, Plaintiff is entitled to declaratory relief as to rights, status, and legal relations at issue in this matter in regards to the Subject Property.

21. Plaintiff has found it necessary to employ the undersigned attorney to bring suit. Therefore, pursuant to applicable statutes, prevailing case law, and the terms of the note and deed of trust, Plaintiff is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

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SECOND CAUSE OF ACTION

(Quiet Title)

22. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 21 and incorporates the same as though fully set forth herein.

23. Plaintiff seeks an order from this Court, pursuant to NRS 40.010, declaring that the deed of trust securing the \$240,000.00 loan continues to encumber the Subject Property as security for the note detailed herein notwithstanding the purported homeowners association sale and that Plaintiff's security interest was not abrogated by the purported homeowners association sale.

24. The claims between Plaintiff and Defendant pertain to real property and are clearly adverse, needing a determination from this Court.

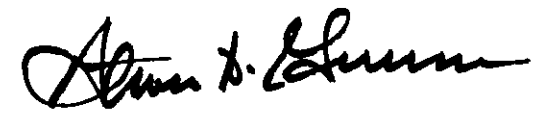
25. Plaintiff has found it necessary to employ the undersigned attorney to bring suit. Therefore, pursuant to applicable statutes, prevailing case law, and the terms of the note and deed of trust, Plaintiff is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

WHEREFORE, Plaintiff prays for relief as follows:

1. For a Declaratory Judgment that the security interest recorded with the Clark County Recorder on June 12, 2006 as Book and Instrument No. 20060612-0003526 remains intact and was not extinguished by the purported homeowners association sale on March 1, 2013;
2. For an order quieting title in the name of Defendant subject to the security interest of Plaintiff;
3. For reasonable attorney's fees;

Tel (702) 258-8200 Fax (702) 258-8787

TAB 2



CLERK OF THE COURT

SUMM

Gregory L. Wilde, Esq.

Nevada Bar No. 4417

Kevin S. Soderstrom, Esq.

Nevada Bar No. 10235



212 SOUTH JONES BOULEVARD

LAS VEGAS, NEVADA 89107

TELEPHONE: (702) 258-8200

FACSIMILE: (702) 258-8787

Attorneys for Plaintiff

JPMorgan Chase Bank

13-73960

EIGHTH JUDICIAL DISTRICT COURT

CLARK, COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company; DOES 1 through 10;
and ROE BUSINESS ENTITIES 1 through 10,
inclusive,

Defendants.

Case No.: A-13-692304-C
Dept. No.: XVIII

SUMMONS

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS READ
THE INFORMATION BELOW.**

TIFFANY & BOSCO, P.A.

212 S. Jones Blvd.

Las Vegas, NV 89107

Tel 258-8200 Fax 258-8787

1 **TO THE DEFENDANT(S):** SFR INVESTMENTS POOL 1, LLC, a Nevada limited
2 liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10,
3 inclusive,

4 A Civil Complaint has been filed by the Plaintiff against you for the relief set forth in
the Complaint.

5 1. If you intend to defend this lawsuit, within 20 days after this Summons is served
6 on you exclusive of the day of service, you must do the following:

7 (a) File with the Clerk of this Court, whose address is shown below, a formal written
8 response to the Complaint in accordance with the rules of the Court, with the appropriate filing
9 fee.

10 (b) Serve a copy of your response upon the attorney whose name and address is shown
11 below.

12 2. Unless you respond, your default will be entered upon application of the Plaintiff
13 and this Court may enter a judgment against you for the relief demanded in the Complaint,
14 which could result in the taking of money or property or other relief requested in the Complaint.

15 3. If you intend to seek the advice of an attorney in this matter, you should do so
16 promptly so that your response may be filed on time.

17 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
18 members, commission members and legislators each have 45 days after service of this Summon
19 within which to file an Answer or other responsive pleading to the Complaint.
20

21 Issued at the direction of:

STEVEN D. GRIERSON
CLERK OF THE COURT

22 **TIFFANY & BOSCO, P.A.**

CLERK OF COURT

23 By  #10235

24 By 

25 GREGORY L. WILDE, ESQ.
26 Nevada State Bar No, 4417
27 212 South Jones Boulevard
28 Las Vegas, NV 89107

Deputy Clerk Date
County Courthouse
200 Lewis Avenue (3rd Floor)
Las Vegas, Nevada 89155

MICHELLE MCCARTHY

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, A NATIONAL
ASSOCIATION

Plaintiff,

Case No:A-13-692304-C

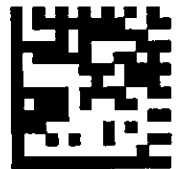
vs.

SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF WASHOE ss.:



JOHN LEE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT; CIVIL COVER SHEET** on **02/26/2014** and served the same on **02/26/2014** at **2:00 PM** by delivering and leaving a copy with:

FRANCIS SEVERE, PROCESS SPECIALIST, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of **PARACORP INCORPORATED**, resident agent for **SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY**, at the registered address of:


Service address: 318 N. CARSON ST, #208, Carson City, NV 89701

A description of **FRANCIS SEVERE** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	BLK	31	5'3	135
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 02/27/2014
by JOHN LEE

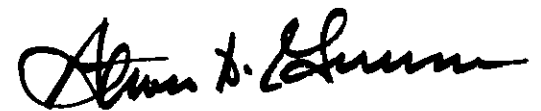

JOHN LEE
Registration#: R-004475
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: 13-73960

No Notary is Required per NRS 53.045



45628

TAB 3



CLERK OF THE COURT

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Attorneys for Defendant/Counter-claimant
9 *SFR Investments Pool 1, LLC*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JPMORGAN CHASE BANK, NATIONAL
13 ASSOCIATION, a national association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
17 Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
18 1 through 10, inclusive,

19 Defendants.

20 SFR INVESTMENTS POOL 1, LLC, a
21 Nevada limited liability company,

22 Counter-Claimant,

23 vs.

24 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
25 ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
26 DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

27 Counter-Defendant/Cross-Defendants.
28

Case No. A-13-692304-C

Dept. No. XVIII

**ANSWER, COUNTERCLAIM AND
CROSS-CLAIM**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR” or “Defendant”), hereby answers
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION’s (“Chase”) Complaint as follows:

PARTIES AND JURISDICTION

1. Answering paragraph 1 of the complaint, SFR admits upon information and belief, that
the subject matter of Chase’s complaint is real property commonly known as **3263 Morning
Springs Drive, Henderson, NV 89074**. The remaining allegations in paragraph 1 of the
complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer
is required, SFR denies the factual allegations contained in paragraph 1 of the complaint.

2. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraph 2 of the complaint, and therefore denies said
allegations.

3. SFR admits the factual allegations contained in paragraph 3 of the complaint.

4. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraphs 4 and 5 of the complaint, and therefore denies said
allegations.

5. SFR admits the factual allegations contained in paragraphs 6 and 7 of the complaint.

GENERAL ALLEGATIONS

6. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraphs 8, 9, 10 and 11 of the complaint, and therefore
denies said allegations.

7. SFR admits the factual allegations contained in paragraph 12 of the complaint.

8. SFR is without sufficient knowledge or information to form a belief as to the truth of the
factual allegations contained in paragraph 13 of the complaint, and therefore denies said
allegations.

9. SFR admits the factual allegations contained in paragraph 14 of the complaint.

///

FIRST CAUSE OF ACTION

(Declaratory Relief)

10. SFR repeats and realleges its answers to paragraphs 1 through 14 of the complaint as though fully set forth herein.

11. SFR admits the factual allegations contained in paragraphs 16 and 17 of the complaint.

12. The allegations contained in paragraphs 18, 19 and 20 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 18, 19 and 20 of the complaint.

13. SFR denies the factual allegations contained in paragraph 21 of the complaint.

SECOND CAUSE OF ACTION

(Quiet Title)

14. SFR repeats and realleges its answers to paragraphs 1 through 21 of the complaint as though fully set forth herein.

15. The allegations contained in paragraphs 23 and 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 23 and 24 of the complaint.

16. SFR denies the factual allegations contained in paragraph 25 of the complaint.

AFFIRMATIVE DEFENSES

1. Chase fails to state a claim upon which relief may be granted.

2. Chase is not entitled to relief from or against SFR, as Chase has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Chase.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to Chase.

6. Chase's claims are barred because SFR complied with applicable statutes and with the

requirements and regulations of the State of Nevada.

7. Chase's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

8. Chase is not entitled to equitable relief because it has an adequate remedy at law.

9. Chase has no standing to enforce the first deed of trust and the underlying promissory note.

10. The first deed of trust and other subordinate interests in the Property were extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

COUNTERCLAIM AND CROSS-CLAIM
FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests injunctive relief against Counter-Defendant, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase"), Counter Defendant and ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Cross-Defendants as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043** (the "Property").

2. Upon information and belief, Counter-Defendant JPMORGAN CHASE BANK, NATIONAL ASSOCIATION ("Chase"), is a national association that may claim an interest in the Property via a 2006 deed of trust originated by GreenPoint Mortgage Funding, Inc.

1 3. Upon information and belief, Cross-Defendants, ROBERT M. HAWKINS and
2 CHRISTINE V. HAWKINS (the “Hawkinses”) as husband and wife, are individuals who are
3 the former homeowners that may claim an interest in the Property.

4 4. Upon information and belief, each of the Cross-Defendants sued herein as DOES I
5 through X, inclusive claim an interest in the Property or are responsible in some manner for the
6 events and action that SFR seeks to enjoin; that when the true names capacities of such
7 defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert
8 the true names, identities and capacities together with proper charges and allegations.

9 5. Upon information and belief, each of the Cross-Defendants sued herein as ROES
10 CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in
11 some manner for the events an happenings herein that SFR seeks to enjoin; that when the true
12 names capacities of such defendants become known, SFR will ask leave of this Court to amend
13 this counterclaim to insert the true names, identities and capacities together with proper charges
14 and allegations.

15 II. GENERAL ALLEGATIONS

16 ***SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super*** 17 ***Priority Amounts***

18 6. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a
19 publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* (“Association
20 foreclosure sale”). Since the Association foreclosure sale, SFR has expended additional funds
21 and resources in relation to the Property.

22 7. On or about March 6, 2013, the resulting foreclosure deed was recorded in the Official
23 Records of the Clark County Recorder as Instrument Number 201303060001648 (“Association
24 Foreclosure Deed”).

25 8. The foreclosure sale was conducted by Nevada Association Services, Inc. (“NAS”), agent
26 for the Pebble Canyon Homeowners Association (“Association”), pursuant to the powers
27 conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the
28 Association’s governing documents (CC&R’s) and a Notice of Delinquent Assessment Lien,

1 recorded on August 3, 2012 in the Official Records of the Clark County Recorder as Instrument
2 Number 201208030002872 ("Association Lien").

3 9. As recited in the Association Foreclosure Deed, the Association foreclosure sale
4 complied with all requirements of law, including but not limited to, recording and mailing of
5 copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and
6 publication of the Notice of Sale.

7 10. Pursuant to NRS 116.3116(2), the entire Association Lien

8 is prior to all other liens and encumbrances of unit except:

9 (a) Liens and encumbrances recorded before the recordation of the declaration
10 and, in a cooperative, liens and encumbrances which the association creates,
assumes or takes subject to;

11 (b) A first security interest on the unit recorded before the date on which the
12 assessment sought to be enforced became delinquent or, in a cooperative, the first
security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

13 (c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

14 11. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over
15 even a first security interest in the Property:

16 [the Association Lien] is also prior to all security interests described in paragraph
17 (b) to the extent of any charges incurred by the association on a unit pursuant to
NRS 116.310312 and to the extent of the assessments for common expenses
18 based on the periodic budget adopted by the association pursuant to NRS
116.3115 which would have become due in the absence of acceleration during the
19 9 months immediately preceding institution of an action to enforce the lien[.]

20 12. Upon information and belief, the Association took the necessary action to trigger the
21 super-priority portion of the Association Lien.

22 13. Upon information and belief, no party still claiming an interest in the Property recorded a
23 lien or encumbrance prior to the declaration creating the Association.

24 14. Upon information and belief, SFR's bid on the Property was in excess of the amount
25 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

26 15. Upon information and belief, the Association or its agent NAS has distributed or is
27 attempting to distribute the excess funds to lien holders in order of priority pursuant to NRS
28 116.3114(c).

1 16. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
2 constructive notice of the requirement to pay assessments to the Association and of the
3 Association Lien.

4 17. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
5 constructive notice of the Association's foreclosure proceedings.

6 18. Upon information and belief, prior to the Association foreclosure sale, no individual or
7 entity paid the full amount of delinquent assessments described in the Notice of Default.

8 19. Upon information and belief, Counter-Defendant Chase had actual or constructive notice
9 of the super-priority portion of the Association Lien.

10 20. Upon information and belief, Counter-Defendant Chase knew or should have known that
11 its interest in the Property could be extinguished through foreclosure if he failed to cure the
12 super-priority portion of the Association Lien representing 9 months of assessments for common
13 expenses based on the periodic budget adopted by the association which would have become due
14 in the absence of acceleration for the relevant time period.

15 21. Upon information and belief, prior to the Association foreclosure sale, no individual or
16 entity paid the super-priority portion of the Association Lien representing 9 months of
17 assessments for common expenses based on the periodic budget adopted by the association
18 which would have become due in the absence of acceleration for the relevant time period.

19 22. SFR is a bonafide purchaser.

20 23. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR "without equity or
21 right of redemption," and the Foreclosure Deed is conclusive against the Property's "former
22 owner, his or her heirs and assigns, and **all other persons.**"

23 ***Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien***

24 24. Upon information and belief, the Hawkinses, first obtained title to the Property in June
25 of 2006 through a Grant, Bargain Sale Deed from Nathan VanNoy recorded against the Property
26 in the Official Records of the Clark County Recorder as Instrument No. 200606120003525.

27 25. On or about June 12, 2006, GreenPoint Mortgage Funding, Inc. ("GreenPoint") recorded
28 a deed of trust against the Property in the Official Records of the Clark County Recorder as

Instrument No. 200606120003526 ("First Deed of Trust").

26. Upon information and belief, the Association was formed and its declaration of CC&Rs was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust was recorded.

27. Upon information and belief, GreenPoint had actual or constructive notice of the Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

28. The First Deed of Trust contains a Planned Unit Development Rider recognizing the applicability of Association's declaration of CC&Rs that were recorded.

29. Upon information and belief, on October 26, 2009, Colleen Irby, Officer for Mortgage Electronic Registration Systems, Inc. ("MERS") executed an assignment that transferred the beneficial interest in the First Deed of Trust, together with the underlying promissory note to Chase. The assignment was recorded on October 27, 2009 against the Property in Official Records of the Clark County Recorder as Instrument No. 200910270000618.

30. Upon information and belief, Chase had actual or constructive notice of the Association Lien and NRS 116.3116 before it obtained an interest in the First Deed of Trust.

31. On or about October 27, 2009, Chase recorded a document substituting California Reconveyance Company ("CRC") as trustee of the First Deed of Trust.

32. On or about October 27, 2009, CRC recorded a notice of default pursuant to the First Deed of Trust for amounts that became due on July 1, 2009 in the Official Records of the Clark County Recorder as Instrument No. 200910270000620.

33. On or about, November 27, 2013, Chase filed a Complaint for declaratory relief and quiet title.

34. Counter-Defendant Chase's interest in the Property was extinguished by the foreclosure of the Association Lien.

35. Cross Defendants, the Hawkinses' interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

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1 45. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

2 **IV. SECOND CLAIM FOR RELIEF**
3 **(Preliminary and Permanent Injunction)**

4 46. SFR repeats and realleges the allegations of paragraphs 1- 45 as though fully set forth
5 herein and incorporates the same by reference.

6 47. SFR properly acquired title to the Property at the Association foreclosure sale on March
7 1, 2013.

8 48. Counter-Defendant Chase may claim that it maintained an interest in the Property
9 through the First Deed of Trust which was extinguished by the Association foreclosure sale.

10 49. Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

11 50. A foreclosure sale based on the First Deed of Trust is invalid as Counter-Defendant
12 Chase lost its interest in the Property, if any, at the Association foreclosure sale.

13 51. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants
14 would be invalid because their interest in the Property, if any, was extinguished by the
15 Association foreclosure sale.

16 52. Any attempt to take or maintain possession of the Property by Counter-Defendant and
17 Cross-Defendants would be invalid because their interest in the Property, if any, was
18 extinguished by the Association foreclosure sale.

19 53. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-
20 Defendant and Cross-Defendants would be invalid because their interest in the Property, if any,
21 was extinguished by the Association foreclosure sale.

22 54. On the basis of the facts described herein, SFR has a reasonable probability of success on
23 the merits of its claims and has no other adequate remedies at law.

24 55. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-
25 Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that
26 would affect SFR's possession of the Property.

27 56. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-
28 Defendant and Cross-Defendants from any sale or transfer that would affect the title to the

Property.

V. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Counter Defendant and Cross-Defendants be declared to have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

3. For an award of attorney's fees and costs of suit; and

4. For any further relief that the Court may deem just and proper.

DATED March 18th, 2014.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

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Phone: (702) 485-3300

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Attorneys for SFR Investments Pool 1, LLC

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Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES 1
through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES 1
through 10 inclusive.

Counter-Defendant/Cross- Defendants.

Case No. A-13-692304-C

Dept. No. XVIII

**INITIAL APPEARANCE FEE
DISCLOSURE (NRS CHAPTER 19)**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

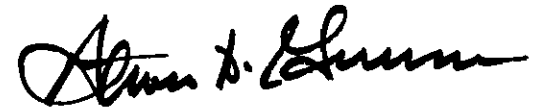
SFR INVESTMENTS POOL 1, LLC	\$223.00
TOTAL	\$223.00

DATED March 18th, 2014.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
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Attorneys for Plaintiff

TAB 4



CLERK OF THE COURT

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Attorneys for Defendant/Counter-claimant
9 SFR Investments Pool 1, LLC

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JPMORGAN CHASE BANK, NATIONAL
13 ASSOCIATION, a national association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
17 Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
18 1 through 10, inclusive,

19 Defendants.

20 SFR INVESTMENTS POOL 1, LLC, a
21 Nevada limited liability company,

22 Counter-Claimant,

23 vs.

24 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
25 ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
26 DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

27 Counter-Defendant/Cross-Defendants.
28

Case No. A-13-692304-C

Dept. No. XVIII

**AMENDED ANSWER, COUNTERCLAIM
AND CROSS-CLAIM**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR” or “Defendant”), hereby files an amended answer to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION’s (“Chase”) Complaint as follows:

PARTIES AND JURISDICTION

1. Answering paragraph 1 of the complaint, SFR admits upon information and belief, that the subject matter of Chase’s complaint is real property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074**. The remaining allegations in paragraph 1 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraph 1 of the complaint.

2. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 2 of the complaint, and therefore denies said allegations.

3. SFR admits the factual allegations contained in paragraph 3 of the complaint.

4. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 4 and 5 of the complaint, and therefore denies said allegations.

5. SFR admits the factual allegations contained in paragraphs 6 and 7 of the complaint.

GENERAL ALLEGATIONS

6. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 8, 9, 10 and 11 of the complaint, and therefore denies said allegations.

7. SFR admits the factual allegations contained in paragraph 12 of the complaint.

8. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 13 of the complaint, and therefore denies said allegations.

9. SFR admits the factual allegations contained in paragraph 14 of the complaint.

FIRST CAUSE OF ACTION

(Declaratory Relief)

10. SFR repeats and realleges its answers to paragraphs 1 through 14 of the complaint as though fully set forth herein.

11. SFR admits the factual allegations contained in paragraphs 16 and 17 of the complaint.

12. The allegations contained in paragraphs 18, 19 and 20 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 18, 19 and 20 of the complaint.

13. SFR denies the factual allegations contained in paragraph 21 of the complaint.

SECOND CAUSE OF ACTION

(Quiet Title)

14. SFR repeats and realleges its answers to paragraphs 1 through 21 of the complaint as though fully set forth herein.

15. The allegations contained in paragraphs 23 and 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 23 and 24 of the complaint.

16. SFR denies the factual allegations contained in paragraph 25 of the complaint.

AFFIRMATIVE DEFENSES

1. Chase fails to state a claim upon which relief may be granted.

2. Chase is not entitled to relief from or against SFR, as Chase has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Chase.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to Chase.

6. Chase's claims are barred because SFR complied with applicable statutes and with the

requirements and regulations of the State of Nevada.

7. Chase's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

8. Chase is not entitled to equitable relief because it has an adequate remedy at law.

9. Chase has no standing to enforce the first deed of trust and the underlying promissory note.

10. The first deed of trust and other subordinate interests in the Property were extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

COUNTERCLAIM AND CROSS-CLAIM
FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests injunctive relief against Counter-Defendant, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase"), Counter Defendant and ROBERT M. HAWKINS, an individual; CHRISTINE V. HAWKINS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Cross-Defendants as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043** (the "Property").

2. Upon information and belief, Counter-Defendant JPMORGAN CHASE BANK, NATIONAL ASSOCIATION ("Chase"), is a national association that may claim an interest in the Property via a 2006 deed of trust originated by GreenPoint Mortgage Funding, Inc.

3. Upon information and belief, Cross-Defendants, ROBERT M. HAWKINS and CHRISTINE V. HAWKINS (the “Hawkinses”) as husband and wife, are individuals who are the former homeowners that may claim an interest in the Property.

4. Upon information and belief, each of the Cross-Defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

5. Upon information and belief, each of the Cross-Defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

6. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. (“Association foreclosure sale”). Since the Association foreclosure sale, SFR has expended additional funds and resources in relation to the Property.

7. On or about March 6, 2013, the resulting foreclosure deed was recorded in the Official Records of the Clark County Recorder as Instrument Number 201303060001648 (“Association Foreclosure Deed”).

8. The Pebble Canyon Homeowners Association (“Association”) had a lien pursuant to NRS 116.3116(1) (“Association Lien”) that was perfected at the time the Association recorded its declaration of CC&Rs.

9. The foreclosure sale was conducted by Nevada Association Services, Inc. (“NAS”), agent

1 for the Association pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
2 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of
3 Delinquent Assessments, recorded on August 3, 2012 in the Official Records of the Clark
4 County Recorder as Instrument Number 201208030002872.

5 10. As recited in the Association Foreclosure Deed, the Association foreclosure sale
6 complied with all requirements of law, including but not limited to, recording and mailing of
7 copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and
8 publication of the Notice of Sale.

9 11. Pursuant to NRS 116.3116(2), the entire Association Lien

10 is prior to all other liens and encumbrances of unit except:

11 (a) Liens and encumbrances recorded before the recordation of the declaration
12 and, in a cooperative, liens and encumbrances which the association creates,
assumes or takes subject to;

13 (b) A first security interest on the unit recorded before the date on which the
14 assessment sought to be enforced became delinquent or, in a cooperative, the first
security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

15 (c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

16 12. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over
17 even a first security interest in the Property:

18 [the Association Lien] is also prior to all security interests described in paragraph
19 (b) to the extent of any charges incurred by the association on a unit pursuant to
NRS 116.310312 and to the extent of the assessments for common expenses
20 based on the periodic budget adopted by the association pursuant to NRS
116.3115 which would have become due in the absence of acceleration during the
9 months immediately preceding institution of an action to enforce the lien[.]

21 13. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot
22 be waived by agreement or contract, including any subordination clause in the CC&Rs.

23 14. According to NRS 116.1108, real property law principles supplement the provisions of
24 NRS 116.

25
26 15. Upon information and belief, the Association took the necessary action to trigger the
27 super-priority portion of the Association Lien.

28 16. Upon information and belief, no party still claiming an interest in the Property recorded a

1 lien or encumbrance prior to the declaration creating the Association.

2 17. Upon information and belief, SFR's bid on the Property was in excess of the amount
3 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

4 18. Upon information and belief, the Association or its agent NAS has distributed or are
5 attempting to distribute the excess funds to lien holders in order of priority pursuant to NRS
6 116.31164(c).

7 19. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
8 constructive notice of the requirement to pay assessments to the Association and of the
9 Association Lien.

10 20. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
11 constructive notice of the Association's foreclosure proceedings.

12 21. Upon information and belief, prior to the Association foreclosure sale, no individual or
13 entity paid the full amount of delinquent assessments described in the Notice of Default.

14 22. Upon information and belief, Counter-Defendant Chase had actual or constructive notice
15 of the super-priority portion of the Association Lien.

16 23. Upon information and belief, Counter-Defendant Chase knew or should have known that
17 its interest in the Property could be extinguished through foreclosure if he failed to cure the
18 super-priority portion of the Association Lien representing 9 months of assessments for common
19 expenses based on the periodic budget adopted by the association which would have become due
20 in the absence of acceleration for the relevant time period.

21 24. Upon information and belief, prior to the Association foreclosure sale, no individual or
22 entity paid the super-priority portion of the Association Lien representing 9 months of
23 assessments for common expenses based on the periodic budget adopted by the association
24 which would have become due in the absence of acceleration for the relevant time period.

25 25. SFR learned of the Association foreclosure sale through public notices.

26 26. Multiple bidders attended the public auction, which was held at the same time, day and
27 place that NAS generally conducts such auctions.

28 27. SFR is a bona fide purchaser.

28. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR “without equity or right of redemption,” and the Foreclosure Deed is conclusive against the Property’s “former owner, his or her heirs and assigns, and all other persons.”

Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien

29. Upon information and belief, the Hawkinses, first obtained title to the Property in June of 2006 through a Grant, Bargain Sale Deed from Nathan VanNoy recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 200606120003525.

30. On or about June 12, 2006, GreenPoint Mortgage Funding, Inc. (“GreenPoint”) recorded a deed of trust against the Property in the Official Records of the Clark County Recorder as Instrument No. 200606120003526 (“First Deed of Trust”).

31. Upon information and belief, the Association was formed and its declaration of CC&Rs was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust was recorded.

32. Upon information and belief, GreenPoint had actual or constructive notice of the Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

33. The First Deed of Trust contains a Planned Unit Development Rider recognizing the applicability of Association’s declaration of CC&Rs that were recorded.

34. Upon information and belief, on October 26, 2009, Colleen Irby, Officer for Mortgage Electronic Registration Systems, Inc. (“MERS”) executed an assignment that transferred the beneficial interest in the First Deed of Trust, together with the underlying promissory note to Chase. The assignment was recorded on October 27, 2009 against the Property in Official Records of the Clark County Recorder as Instrument No. 200910270000618.

35. Upon information and belief, Chase had actual or constructive notice of the Association Lien and NRS 116.3116 before it obtained an interest in the First Deed of Trust.

36. On or about October 27, 2009, Chase recorded a document substituting California Reconveyance Company (“CRC”) as trustee of the First Deed of Trust.

37. On or about October 27, 2009, CRC recorded a notice of default pursuant to the First Deed of Trust for amounts that became due on July 1, 2009 in the Official Records of the Clark

County Recorder as Instrument No. 200910270000620.

38. On or about, November 27, 2013, Chase filed a Complaint for declaratory relief and quiet title.

39. Counter-Defendant Chase's interest in the Property was extinguished by the foreclosure of the Association Lien.

40. Cross Defendants, the Hawkinses' interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

III. FIRST CLAIM FOR RELIEF
(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.10 & NRS 116.3116)

41. SFR repeats and realleges the allegations of paragraphs 1-40 as though fully set forth herein and incorporates the same by reference.

42. Pursuant to NRS 30.010, et. seq. and NRS 40.10, this Court has the power and authority to declare the SFR's rights and interests in the Property and to resolve the Counter-Defendant and Cross-Defendants' adverse claims in the Property.

43. SFR acquired the Property on March 1, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. and the resulting Association Foreclosure Deed vesting title in SFR was recorded on March 6, 2013.

44. Upon information and belief, Counter Defendant, Chase may claim an interest in the Property via the First Deed of Trust against the Property even after the Association foreclosure sale.

45. Upon information and belief, Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

46. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

47. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has priority over the First Deed of Trust.

48. Counter-Defendant and Cross-Defendants were duly notified of the Association

1 foreclosure sale and failed to act to protect their interests in the Property, if any legitimately
2 existed.

3 49. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title
4 owner of the Property; (2) the Association Foreclosure Deed is valid and enforceable; (3) the
5 Association foreclosure sale extinguished Counter-Defendant and Cross-Defendants' ownership
6 and security interests in the Property; and (4) SFR's rights and interest in the Property are
7 superior to any adverse interest claimed by Counter-Defendant and Cross-Defendants.

8 50. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

9 **IV. SECOND CLAIM FOR RELIEF**
10 **(Preliminary and Permanent Injunction)**

11 51. SFR repeats and realleges the allegations of paragraphs 1-50 as though fully set forth
12 herein and incorporates the same by reference.

13 52. SFR properly acquired title to the Property at the Association foreclosure sale on March
14 1, 2013.

15 53. Counter-Defendant Chase may claim that it maintained an interest in the Property
16 through the First Deed of Trust which was extinguished by the Association foreclosure sale.

17 54. Cross-Defendants, the Hawkinses, may claim an ownership interest in the Property.

18 55. A foreclosure sale based on the First Deed of Trust is invalid as Counter-Defendant
19 Chase lost its interest in the Property, if any, at the Association foreclosure sale.

20 56. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants
21 would be invalid because their interest in the Property, if any, was extinguished by the
22 Association foreclosure sale.

23 57. Any attempt to take or maintain possession of the Property by Counter-Defendant and
24 Cross-Defendants would be invalid because their interest in the Property, if any, was
25 extinguished by the Association foreclosure sale.

26 58. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-
27 Defendant and Cross-Defendants would be invalid because their interest in the Property, if any,
28 was extinguished by the Association foreclosure sale.

59. On the basis of the facts described herein, SFR has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

60. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that would affect SFR's possession of the Property.

61. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from any sale or transfer that would affect the title to the Property.

V. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Counter Defendant and Cross-Defendants be declared to have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

3. For an award of attorney's fees and costs of suit; and

4. For any further relief that the Court may deem just and proper.

DATED March 20th, 2014.

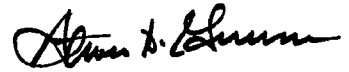
HOWARD KIM & ASSOCIATES

/s/Diana S. Cline
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TAB 5

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212 S. Jones Blvd.
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CLERK OF THE COURT

1 MOT

2 GREGORY L. WILDE, ESQ.

3 Nevada Bar No. 4417

4 KEVIN S. SODERSTROM, ESQ.

5 Nevada Bar No. 10235

6 **TIFFANY & BOSCO, P.A.**

7 212 South Jones Blvd.

8 Las Vegas, Nevada 89107

9 (702) 258-8200

10 Attorney for Plaintiff

11 JPMorgan Chase Bank, National Association

12 13-73960

13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JPMORGAN CHASE BANK, NATIONAL
16 ASSOCIATION, a national association,

17 Plaintiff,

18 vs.

19 SFR INVESTMENTS POOL 1, LLC, a
20 Nevada limited liability company; DOES 1
21 through 10; and ROE BUSINESS ENTITIES
22 1 through 10, inclusive,

23 Defendants.

Case No.: A692304

Dept. No.: XVIII

24 And Related Actions.

25 **JPMORGAN CHASE BANK'S MOTION FOR SUMMARY JUDGMENT**

26 COMES NOW Plaintiff/Counterdefendant JPMorgan Chase Bank, National Association
27 (hereinafter the "Plaintiff" or "Chase"), by and through its counsel of record, Gregory L. Wilde,
28 Esq., and moves the above-captioned Court to grant summary judgment, pursuant to NRCP 56,
in favor of Chase on each of Chase's claims against Defendant/Counterclaimant SFR
Investments Pool 1, LLC (hereinafter the "Defendant" or "SFR") and on each of SFR's
counterclaims against Chase in this action.

///

///

REC'D APR 02 2014

AA_0040

TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

1 This Motion is made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities, the attached documents, and any other additional
3 information or oral argument as may be requested by the Court.

4
5 DATED this 25th day of March, 2014.

6 **TIFFANY & BOSCO, P.A.**

7 /s/ Kevin S. Soderstrom

8
9 GREGORY L. WILDE, Esq.

Nevada Bar No.: 4417

10 KEVIN S. SODERSTROM, ESQ.

Nevada Bar No. 10235

11 212 South Jones Blvd.

12 Las Vegas, Nevada 89107

Attorney for Plaintiff

13 JPMorgan Chase Bank, National Association

14 **NOTICE OF MOTION**

15 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing
16 JPMORGAN CHASE BANK'S MOTION FOR SUMMARY JUDGMENT on for hearing
17 before the above-entitled court on the 1 day of May, 2014, at
18 8 : 1 5 a.m., or as soon thereafter as counsel can be heard.

19
20 DATED this 25th day of March, 2014.

21 **TIFFANY & BOSCO, P.A.**

22 /s/ Kevin S. Soderstrom

23
24 GREGORY L. WILDE, Esq.

Nevada Bar No.: 4417

25 KEVIN S. SODERSTROM, ESQ.

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26 212 South Jones Blvd.

27 Las Vegas, Nevada 89107

Attorney for Plaintiff

28 JPMorgan Chase Bank, National Association

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

A. STATEMENT OF UNDISPUTED FACTS

On or about June 7, 2006, Robert M. Hawkins and Christine V. Hawkins (hereinafter collectively the "Borrowers") signed a promissory note (hereinafter the "Chase Note") whereby they promised to repay a home loan in the amount of \$240,000.00. A true and correct copy of the Chase Note is attached hereto as Exhibit "1".

Performance of the Borrower's repayment obligation was secured by a deed of trust (hereinafter the "Chase Deed of Trust") executed by the Borrowers against the real property located at 3263 Morning Springs Drive, Henderson, Nevada, Assessor's Parcel Number 177-24-514-043 (hereinafter the "Subject Property") in Clark County, Nevada. A true and correct copy of the Chase Deed of Trust is attached hereto as Exhibit "2". The Chase Deed of Trust was recorded with the Clark County Recorder on June 12, 2006 as Book and Instrument No. 20060612-0003526. Exhibit "2" attached hereto.

The original lender and beneficiary under the Chase Note and Chase Deed of Trust was GreenPoint Mortgage Funding, Inc. *Exhibits "1" and "2" attached hereto.* GreenPoint Mortgage Funding, Inc. assigned its rights and interests under the Chase Note and Chase Deed of Trust to Chase via an assignment which was recorded with the Clark County Recorder on October 27, 2009 as Book and Instrument No. 20091027-0000618. *Exhibit "3" attached hereto.*

Sometime after signing the Chase Note and Chase Deed of Trust the Borrowers purportedly fell behind in the payment of homeowners association assessments to Pebble Canyon HOA (hereinafter the "HOA") resulting in a lien for delinquent assessments (hereinafter the "HOA Lien") being recorded against the Subject Property. The HOA Lien was

1 recorded with the Clark County Recorder on August 3, 2012 as Book and Instrument No.
2 20120803-0002972. A true and correct copy of the HOA Lien is attached hereto as Exhibit "4".

3 The HOA, through its agent, Nevada Association Services, Inc., later sold the Subject
4 Property at a non-judicial foreclosure sale on March 1, 2013 pursuant to the HOA Lien and
5 NRS 116. A true and correct copy of the deed (hereinafter the "Foreclosure Deed") issued by
6 the HOA is attached hereto as Exhibit "5". The Foreclosure Deed purportedly conveyed title to
7 SFR (hereinafter "SFR"). Exhibit "5" attached hereto. The Foreclosure Deed states that the
8 conveyance to SFR was "without warranty expressed or implied". Exhibit "5" attached hereto.
9 The Foreclosure Deed was recorded against the Subject Property with the Clark County
10 Recorder on March 6, 2013 as Book and Instrument No. 20130306-0001648. Exhibit "5"
11 attached hereto.
12

13
14 **B. CLAIMS INVOLVING CHASE**

15 Chase has asserted the following claims against SFR in its Complaint

- 16
17 1. Declaratory Relief
18 2. Quiet Title

19 SFR has asserted the following counterclaims against Chase in its Amended Answer,
20 Counterclaim, and Cross-Claim (hereinafter the "Counterclaim"):

- 21
22 1. Declaratory Relief / Quiet Title Pursuant to NRS 30.010, et seq., NRS 40.10
23 [sic], and NRS 116.3116
24 2. Preliminary and Permanent Injunction.

25 ///

26 ///

27 ///

28 ///

II.

RELEVANT LAW

A. STANDARD OF REVIEW FOR MOTION FOR SUMMARY JUDGMENT

The purpose of a motion for summary judgment is to obviate trials when they would serve no useful purpose. *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963).

Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRCP 56(c).

The Supreme Court of Nevada abandoned the "slightest doubt" standard and clarified the applicable standard for summary judgment in *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), stating the following:

"We take this opportunity to put to rest any questions regarding the continued viability of the 'slightest doubt' standard. We now adopt the standard employed in *Liberty Lobby, Celotex, and Matsushita*. Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." (footnotes omitted.) *Id.* at 731, 1031.

All facts and inferences drawn must be viewed in the light most favorable to the responding party when determining whether a genuine issue of material fact exists for summary judgment purposes. *Sawyer v. Sugarless Shops, Inc.*, 101 Nev. 265, 267, 792 P.2d 14, 15 (1990). Evidence that is merely colorable or not significantly probative is not sufficient to preclude summary judgment. *Oehler v. Humana, Inc.*, 105 Nev. 348, 351-52, 775 P.2d 1271, 1273 (1989). Conclusory statements along with general allegations do not create an issue of material fact. *Michaels v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991).

///

III.

ARGUMENT

A. SUMMARY JUDGMENT MUST BE ENTERED IN FAVOR OF CHASE ON EACH OF ITS CLAIMS AGAINST SFR AND EACH OF SFR'S COUNTERCLAIMS AGAINST CHASE, AS THE LAW SUPPORTS CHASE'S POSITION AND NO GENUINE ISSUES OF MATERIAL FACT EXIST TO PRECLUDE SUMMARY JUDGMENT IN FAVOR OF CHASE

1. The Dispositive Issue for Each of the Claims for Relief Must Be Adjudicated in Favor of Chase

At the heart of this dispute is the interpretation of NRS 116.3116, whose language SFR has distorted and misinterpreted with the hope of obtaining an enormous windfall at the expense of Chase. As discussed in greater detail below, NRS 116.3116, when properly interpreted and applied, leads to the following conclusions in cases such as this where a homeowners association has completed a foreclosure prior to a first position secured lender completing a foreclosure:

(a) If the homeowners association has foreclosed non-judicially, then the homeowners association receives whatever they obtain from the sale proceeds, and the homeowners association's lien is completely extinguished. The first position secured lender's lien, if recorded prior to the date on which the homeowners association assessments became delinquent, is unaffected. This is due to the explicit exception stated in NRS 116.3116(2)(b) and the fact that no "action" has been instituted by the homeowners association so as to trigger a super-priority lien in accordance with the final paragraph of NRS 116.3116(2).

(b) If the homeowners association has foreclosed judicially, then the homeowners association receives whatever they obtain from the sale proceeds, and the homeowners association's lien is completely extinguished. The first position secured lender's lien, if recorded prior to the date on which the homeowners association assessments became

1 delinquent, may potentially be affected. This is due to the fact that an “action” has been
2 instituted by the homeowners association, which could trigger the super-priority lien in
3 accordance with the final paragraph of NRS 116.3116(2).
4

5 Each of the claims and counterclaims at issue between Chase and SFR involves or is
6 related to the interpretation of NRS 116.3116 and the issue of whether SFR acquired title to the
7 Subject Property free and clear of the Chase Deed of Trust through a non-judicial homeowners
8 association foreclosure sale. For the reasons stated below, SFR clearly did not acquire title free
9 and clear of the Chase Deed of Trust.
10

11 **a. There is No Dispute That the Chase Deed of Trust Was Recorded**
12 **Prior to the HOA Lien**

13 The Chase Deed of Trust was recorded with the Clark County Recorder on June 12,
14 2006 as Book and Instrument No. 20060612-0003526. *Exhibit “2” attached hereto.* The HOA
15 Lien was recorded with the Clark County Recorder more than six years later on August 3, 2012
16 as Book and Instrument No. 20120803-0002972. *Exhibit “4” attached hereto.* Therefore, the
17 Chase Deed of Trust was recorded prior to the HOA Lien, and there is there is no genuine issue
18 as to this material fact.
19

20 **b. SFR’s Reliance on NRS 116.3116 is Misplaced, As SFR Has**
21 **Ignored Both the Explicit Exception for First Position Secured**
22 **Lenders and the Requirement for “Institution of an Action”**
23 **In Order to Trigger a Super- Priority Lien**

24 As a general rule, a foreclosure of a lien extinguishes liens recorded after the foreclosed
25 lien, but the purchaser at foreclosure takes title subject to any prior recorded liens. See CJS
26 Mortgages § 838. This is the common law rule of priority, often called the “first in time, first in
27 right” rule. George L. Blum, J.D., 51 Am, Jur. 2D Liens § 68 Priorities (2012).
28

///

1 SFR has alleged in its Counterclaim that "Counter-Defendant Chase's interest in the
2 Property was extinguished by the foreclosure of the Association Lien." Counterclaim, 9:4-5.
3 SFR alleges that the Chase Deed of Trust was extinguished as a result of the HOA Lien having
4 super-priority status over the Chase Deed of Trust. SFR has cited NRS 116.3116 in support of
5 its allegations. Counterclaim, 6:9-27.
6

7 It is well established that "when the statute's language is plain, the sole function of the
8 courts – at least where the disposition required by the text is not absurd – is to enforce it
9 according to its terms." Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A., 530 U.S.
10 1, 6, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000) (Internal quotation marks omitted) (quoting United
11 States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290
12 (1989), in turn quoting Caminetti v. United States, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed.
13 442 (1917)). NRS 116.3116(2), which is routinely misinterpreted by SFR and others similarly
14 situated, states the following, in part:
15
16

17 "2. A lien under this section is prior to all other liens and encumbrances on a
18 unit except:

19 (a) Liens and encumbrances recorded before the recordation of the
20 declaration and, in a cooperative, liens and encumbrances which the
21 association creates, assumes or takes subject to;

22 (b) A first security interest on the unit recorded before the date on
23 which the assessment sought to be enforced became delinquent or, in a
24 cooperative, the first security interest encumbering only the unit's owner's
25 interest and perfected before the date on which the assessment sought to
26 be enforced became delinquent; and

27 (c) Liens for real estate taxes and other governmental assessments or
28 charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the
extent of any charges incurred by the association on a unit pursuant to NRS
116.310312 and to the extent of the assessments for common expenses based on
the periodic budget adopted by the association pursuant to NRS 116.3115 which

1 would have become due in the absence of acceleration during the 9 months
2 immediately preceding **institution of an action to enforce the lien...** (Emphasis
added.)

3 Chase's position is supported by a number of decisions from both the federal courts and
4 the Nevada state courts. For instance, in Weeping Hollow Avenue Trust v. Spencer, 2013 WL
5 2296313, the same issue was before the United States District Court for the District of Nevada,
6 and the material facts were analogous to the present case. A lender had recorded a deed of trust
7 in 2008, the homeowners association had recorded a lien for delinquent assessments in 2010,
8 and the property was sold to a third party purchaser by the homeowners association pursuant to
9 NRS 116.3116 in 2012. The third party purchaser then sought to quiet title against the secured
10 lender and others.
11

12 In dismissing the complaint in Weeping Hollow Avenue Trust, the Court not only
13 rejected the quiet title claims of the third party purchaser but also provided a thorough
14 discussion of the issues, stating:
15

16 "The court finds that plaintiff does not have a likelihood of success on the merits.
17 See section IV.B infra. Plaintiff's argument is based on its foreclosure on the
18 property pursuant to NRS 116.3116 because of Spencer's delinquency in paying
19 HOA fees and/or dues. **Plaintiff argues that its foreclosure extinguished the
20 bank's first position deed of trust. As discussed more thoroughly in section
21 IV.B, the plain language of the NRS 116.3116, the legislative history and
22 intent of the statute, and a mountain of Nevada state and federal cases all
hold to the contrary.** Plaintiff does not have a likelihood of success on the
merits. The motion for a preliminary injunction and the motion for a temporary
restraining order are both denied.

23 ...
24 Plaintiff's complaint seeks to quiet title and declaratory relief. Defendant argues
25 that an HOA foreclosure pursuant to NRS 116 does not extinguish a first position
deed of trust. The court agrees with defendant.

26 ...
27 The clear language of this statute states that an HOA's lien is prior to all other
28 liens and encumbrances secured by the property, except a first security interest on
the property recorded before the date on which the assessment became delinquent.
In this case, Wells Fargo properly recorded its deed of trust on December 8, 2008.
The plaintiff HOA recorded its notice of delinquent assessment lien on March 3,

2010. The bank's first position deed of trust was recorded almost fifteen months prior to plaintiff HOA's lien.

Additionally, plaintiff is required to (1) produce a copy of the assessment lien upon which the foreclosure was based and (2) allege that the assessment lien chronologically precedes the deed of trust. Centana v. Mortg. Elec. Registration Sys., no. 2:11-cv-02105-GMN-RJJ, 2012 WL 3730528, at *3 (D.Nev. Aug. 28, 2012). In this case, the complaint does not allege that the assessment lien chronologically predates the deed of trust. The complaint could not allege such a fact in good faith because the deed of trust was recorded almost fifteen months prior to the assessment lien.

Also, relevant is NRS 116.3116(2)(c), which carves out a limited exception to NRS 116.3116(2)(b). Read in its entirety, NRS 116.3116(2)(c) states that an HOA's unpaid charges and assessments incurred during the nine months prior to the foreclosure of a first position mortgage continue to encumber the property after the foreclosure of the first position deed of trust. This nine month period of unpaid charges is known as a 'super priority lien.' However, the super priority lien does not extinguish the first position deed of trust.

... This subsection has already been interpreted by a court in this district. 'NRS 116.3116(2)(c) creates a limited super priority lien for 9 months of HOA assessments leading up to the foreclosure of the first mortgage, but it does not eliminate a the first security interest.' Diakonos Holdings, LLC v. Countrywide Home Loans, Inc ., no. 2:12-cv-00949-KJD-RJJ, 2013 WL 531092, at *3 (D.Nev. Feb. 11, 2013). '[T]he HOA may initiate a nonjudicial foreclosure to recover delinquent assessments and the purchaser at the sale takes the property subject to the security interest.' Id.; see also First 100, LLC v. Wells Fargo Bank, N.A. et al, 2:13-cv-00431-JCM-PAL.

The plain language of NRS 116.3116(2)(c) provides an HOA with two options: (1) the HOA may initiate a non judicial foreclosure to recover the delinquent assessments and the purchaser at the sale takes the property subject to the security interest; or, (2) initiate a judicial action to pursue the assessments. In this case, plaintiff HOA properly pursued option one, but the proper of execution of option did not extinguish the security interest in the first position deed of trust. Accordingly, plaintiff's claims for quiet title and declaratory relief fail as a matter of law.

Additionally, defendant Wells Fargo has cited no fewer than seven Nevada state court cases confirming this interpretation of the NRS 116 statutory scheme and the super priority lien. Plaintiff has cited no cases in support of its position and states only that the Nevada Supreme Court has not decided the issue. The court is unpersuaded the Nevada Supreme Court would reach a different interpretation if it decide the issue." (Emphasis added.)

Attached hereto as Exhibit "6" is a true and correct copy of the Weeping Hollow Avenue Trust decision. The Court's dispositive ruling in Weeping Hollow Avenue Trust is consistent with dispositive rulings involving the super-priority lien issue by Judge Jones (Bayview Loan Servicing v. Alessi & Koenig, LLC, case no. 2:13-CV-00164-RCJ, 2013 WL 2460452), Judge Navarro (Centeno v. Mortgage Electronic Registration Systems, Inc., case no. 2:11-cv-02105-GMN, 2012 WL 3730528), and Judge Dawson (Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., case no. 2:12-CV-00949-KJD, 2013 WL 531092). Attached hereto as Exhibits "7", "8", and "9" are true and correct copies of the above-referenced rulings issued by Judge Jones, Judge Navarro, and Judge Dawson. The United States District Court for the District of Nevada also set forth extensive discussion and insightful analysis of the same issues in Premier One Holdings, Inc. v. BAC Home Loans Servicing LP, et al., 2013 WL 4048573, a copy of which is attached hereto as Exhibit "10".

Examples of the many instances in which the Nevada state courts have rejected claims by purchasers at homeowners associations sales to quiet title against senior lienholders include SFR Investments Pool 1 LLC v. Wells Fargo Bank, Case No. A-13-679361-C (Judge Delaney denying plaintiff-purchaser's request for injunctive relief, holding that the association's foreclosure did not extinguish a prior first security interest and that the plaintiff-purchaser took subject to the Deed of Trust), SFR Investments Pool 1, LLC v. U.S. Bank, N.A., Case No. A-13-678814-C (Judge Barker dismissing SFR's Complaint, holding that a first security interest recorded before the date on which the assessment sought to be enforced became delinquent was not extinguished by an association's non-judicial foreclosure sale), and SFR Investments Pool 1, LLC v. U.S. Bank, Case No. A-12-673671-C (Judge Allf dismissing SFR's Complaint, holding the same). See Exhibits "11", "12", and "13" attached hereto.

Chase's position is also supported by the decision of the United States District Court for the District of Massachusetts in *Trustees of MacIntosh Condominium Ass'n v. F.D.I.C.*, 908 F.Supp. 58 (1995), which considered provisions of a Massachusetts statute nearly identical to those of NRS 116.3116(2) and stated:

"Section 6 of M.G.L. ch. 183A—which has been continuously amended in recent years—provides a condominium association with a lien on condominium units for unpaid common expenses. Section 6(a) establishes that 'the organization of unit owners shall have a lien on a unit for any common expense assessment levied against that unit from the time the assessment becomes due.' The condominium lien, which exists on the date the condominium fees become due, is given a priority over all other liens except for the three types listed in section 6(c) of the statute. In applicable part, Section 6(c) provides that

[s]uch lien is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the master deed, (ii) a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other municipal assessments or charges against the unit.

The condominium lien achieves 'super priority' status over the first mortgage when a condominium association institutes 'an action to enforce the lien.' Thus, Section 6(c) provides that:

[t]his lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and to the extent of any costs and reasonable attorneys' fees incurred in the action to enforce the lien ...

Accordingly, the institution of an action by a condominium association is a condition precedent to achieving 'super-priority' status for the condominium lien. However, even when the association files such an action, the condominium lien is given a 'super-priority' status only to the extent of unpaid condominium fees for the preceding six months." (Emphasis added.) Id. at 62-63. *Exhibit "14"* attached hereto.

SFR's Counterclaim ignores both the explicit exception applicable to first position secured lenders as well as the requirement that a judicial foreclosure action be commenced in

1 order to trigger any super-priority status under NRS 116.3116. SFR's assertion that it acquired
2 title to the Subject Property despite the fact that no judicial foreclosure action was ever
3 commenced by the homeowners association is contrary not only to the many dispositive rulings
4 cited above but also to the plain language of the statute.
5

6 SFR's reliance on NRS 116.3116 is simply misplaced. The only way for SFR to
7 overcome the explicit exception stated in NRS 116.3116(2)(b) would be if the homeowners
8 association had instituted and completed a judicial foreclosure, which did not occur.
9 Consequently, SFR has no basis whatsoever to claim that the lien pursuant to which it
10 purportedly acquired title held any super-priority status over the Chase Deed of Trust, and the
11 dispute which currently exists between Chase and SFR regarding the status of the Chase Deed
12 of Trust must be adjudicated in favor of Chase.
13

14 **c. Chase Has Established the Requirements For Quiet Title and**
15 **Declaratory Relief, and SFR Cannot Establish The Requirements**
16 **For Obtaining Such Relief**

17 Both Chase and SFR have asserted claims against each other for quiet title and
18 declaratory relief. Applying the law to the relevant facts of this case, only Chase can prevail on
19 its claims.
20

21 **i. Quiet Title**

22 Quiet title actions are derived from NRS 40.010, which states:

23 **"Actions may be brought against adverse claimants.** An action may be
24 brought by any person against another who claims an estate or interest in real
property, adverse to him, for the purpose of determining such adverse claim."

25 Though not properly a cause of action, an action to quiet title is an equitable proceeding
26 in which a party seeks to settle a dispute over ownership of property or to remove a cloud upon
27 his title to the property. MacDonald v. Krause, 77 Nev. 312, 317-18, 362 P.2d 724 (1961).
28

1 In the instant matter, the interests claimed by Chase and SFR in the Subject Property are
2 adverse to one another. However, for the reasons stated above, the law supports Chase's claim
3 that its security interest was not extinguished by the homeowners association's non-judicial
4 foreclosure sale. For these same reasons, SFR cannot prevail on its claim that Chase's security
5 interest was extinguished by the homeowners association's non-judicial foreclosure sale.
6

7 **ii. Declaratory Relief and Injunctive Relief**

8 Declaratory relief and injunctive relief are actually remedies and not independent causes
9 of action that state a legal claim. Goodwin v. Exec. Trustee Servs., 3:09-cv-00306-ECR-PAL,
10 slip op. at 10 (D. Nev. Dec. 2, 2010). See also Hearne v. Countrywide Home Loans, Inc., WL
11 1815424 (D.Nev.,2010) at 5. See also Shell Oil Co. v. Richter, 52 Cal.App.2d 164, 168, 125
12 P.2d 930 (Ct.App.1942).
13

14 The remedies of declaratory relief and injunctive relief are dependent on the claimant
15 establishing a separate basis for the requested relief. In this case, Chase has established its quiet
16 title claim as a basis for relief, while SFR has not established (and cannot establish) any basis
17 for declaratory or injunctive relief.
18

19 ///

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26 ///

27 ///

28 ///

TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

IV.

CONCLUSION

Based on the foregoing, Chase requests that its Motion for Summary Judgment be granted in its entirety and that summary judgment be entered in favor of Chase with respect to each of the claims involving Chase in this action.

DATED this 25th day of March, 2014.

TIFFANY & BOSCO, P.A.

/s/ Kevin S. Soderstrom

GREGORY L. WILDE, Esq.

Nevada Bar No.: 4417

KEVIN S. SODERSTROM, ESQ.

Nevada Bar No. 10235

212 South Jones Blvd.

Las Vegas, Nevada 89107

Attorney for Plaintiff

JPMorgan Chase Bank, National Association

Exhibit “1”

NOTE

5-503,775687

June 7, 2006
[Date]

Henderson
[City]

Nevada
[State]

3263 Morning Springs Drive, Henderson, NV 89074

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 240,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is GreenPoint Mortgage Funding, Inc.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on August 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on July 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 79363, City of Industry, CA 91716-9363

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,556.64

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

0089838007

VMP-5N (0207).01

Form 3200 1/01

VMP MORTGAGE FORMS - (800)521-7281

Page 1 of 3

AA 0056

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

0089838007

Form 3200 1/01

10. 'UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Robert M. Hawkins

Robert M. Hawkins

(Seal)

-Borrower

_____(Seal)

Christine V. Hawkins

-Borrower

Christine V. Hawkins

(Seal)

-Borrower

_____(Seal)

-Borrower

_____(Seal)

-Borrower

_____(Seal)

-Borrower

_____(Seal)

-Borrower

_____(Seal)

-Borrower

[Sign Original Only]

WITHOUT RECOURSE
PAY TO THE ORDER OF:

WASHINGTON MUTUAL Bank, F.A.
GreenPoint Mortgage Funding, Inc.

TKC
Thomas K. Mitchell
Vice President

Exhibit “2”

20060612-0003526

Assessor's Parcel Number:
177-24-514-043
Return To: GreenPoint Mortgage Funding,
Inc.
981 Airway Court, Suite E
Santa Rosa, CA 95403-2049

Prepared By: GreenPoint Mortgage
Funding, Inc.
100 Wood Hollow Drive, Novato, CA
94945
Recording Requested By: GreenPoint Mortgage
Funding, Inc.
981 Airway Court, Suite E
Santa Rosa, CA, 95403-2049

Fee: \$34.00
N/C Fee: \$0.00

06/12/2006 14:00:35
T20060102935

Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane KGP
Clark County Recorder Pgs: 21

[Space Above This Line For Recording Data]

DEED OF TRUST MIN 100013800898380072

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated June 7, 2006
together with all Riders to this document.

(B) "Borrower" is Robert M. Hawkins and Christine V. Hawkins, Husband And
Wife as joint tenants

Borrower is the trustor under this Security Instrument.

(C) "Lender" is GreenPoint Mortgage Funding, Inc.

Lender is a Corporation

organized and existing under the laws of the State of New York

NEVADA-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT
WITH MERS

VMP-6A(NV) (0507)

Page 1 of 15

VMP Mortgage Solutions, Inc.
(800)521-7291

8007

Form 3029 1/01

AA_0061

Lender's address is 100 Wood Hollow Drive, Novato, CA 94945

(D) "Trustee" is Marin Conveyancing Corp.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated June 7, 2006

The Note states that Borrower owes Lender two hundred forty thousand and 00/100

Dollars

(U.S. \$ 240,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than July 1, 2036

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]
<input checked="" type="checkbox"/> Occupancy Rider	<input type="checkbox"/> Interim Interest Rider	

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time

8007

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of Clark [Name of Recording Jurisdiction]:

As more particularly described in exhibit "A" attached hereto and made a part hereof.

Parcel ID Number: 177-24-514-043
3263 Morning Springs Drive
Henderson
("Property Address"):

which currently has the address of
[Street]
[City], Nevada 89074 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

8007

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

8007

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

8007

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

8007

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

8007

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

8007

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

8007

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

8007

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

8007

one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

8007

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$900.00

8007

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Robert M. Hawkins (Seal)
Robert M. Hawkins -Borrower

Christine V. Hawkins (Seal)
Christine V. Hawkins -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

STATE OF NEVADA
COUNTY OF *Clark*

This instrument was acknowledged before me on
Robert M. Hawkins, Christine V. Hawkins

June 8, 2006

by

Tracey Derrick

Mail Tax Statements To:
Robert M. Hawkins
3263 Morning Springs Drive, Henderson, NV 89074 USA

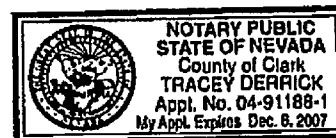


EXHIBIT "A"

All that certain real property situated In the County of Clark, State of Nevada,
described as follows:

Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE CANYON, as shown by
map thereof on file in Book 53 of Plats, Page 45, in the Office of the County
Recorder of Clark County, Nevada.

Assessor's Parcel Number: **177-24-514-043**

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 7th day of June, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to GreenPoint Mortgage Funding, Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 3263 Morning Springs Drive, Henderson, NV 89074

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Declaration of Covenants, Conditions, and Restrictions

(the "Declaration"). The Property is a part of a planned unit development known as Seasons At Pebble Canyon

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

8007

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01

Page 1 of 3

VMP-7R (0411)

VMP Mortgage Solutions, Inc. (800)521-7291

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8007

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Robert M. Hawkins (Seal)
Robert M. Hawkins -Borrower

Christine V. Hawkins (Seal)
Christine V. Hawkins -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

8007

OCCUPANCY RIDER TO MORTGAGE/ DEED OF TRUST/SECURITY DEED

THE OCCUPANCY RIDER is made this 7th day of June, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to GreenPoint Mortgage Funding, Inc. (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

3263 Morning Springs Drive, Henderson, NV 89074
("Property Address")

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

1. That the above-described property will be personally occupied by the Borrower as their principal residence within 60 days after the execution of the Security Instrument and Borrower shall continue to occupy the property as their principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld.
2. That if residency is not established as promised above as well as in the Security Instrument, the Lender may, without further notice, take any or all of the following actions:
 - a. increase the interest rate on the Note by one-half of one percent (0.500%) per annum on a fixed-rate loan or increase the Margin on an Adjustable Rate Note by one-half of one percent (0.500%) per annum and to adjust the principal and interest payments to the amount required to pay the loan in full within the remaining term; and/or
 - b. charge a non-owner occupancy rate adjustment fee of two percent (2.00%) of the original principal balance and/or
 - c. require payment to reduce the unpaid principal balance of the loan to the lesser of (1) 70% of the purchase price of the property or (2) 70% of the appraised value at the time the loan was made. The reduction of the unpaid principal balance shall be due and payable within thirty (30) days following receipt of a written demand for payment, and if not paid within thirty (30) days will constitute a default under the terms and provisions of the Note and Security Instrument, and/or
 - d. declare a default under the terms of the Note and Security Instrument and begin foreclosure proceedings, which may result in the sale of the above-described property; and/or
 - e. refer what is believed to be fraudulent acts to the proper authorities for prosecution. It is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements or reports for the purpose of influencing in any way the action of the Lender in granting a loan on the above property under the provisions of TITLE 18, UNITED STATES CODE, SECTIONS 1010 AND 1014.

It is further understood and agreed that any forbearance by the Lender in exercising any right or remedy given here, or by applicable law, shall not be a waiver of such right or remedy.

Should any clause, section or part of this Occupancy Rider be held or declared to be void or illegal for any reason, all other clauses, sections or parts of this Occupancy Rider which can be effected without such illegal clause, section or part shall nevertheless continue in full force and effect.


It is further specifically agreed that the Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies set forth above, including but not limited to, reasonable attorney's fees.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Occupancy Rider.



(Borrower)

Robert M. Hawkins



(Borrower)

Christine V. Hawkins

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

Exhibit “3”

(2)

Stewart Title

APN#: 177-24-514-043

AND WHEN RECORDED MAIL TO

CALIFORNIA RECONVEYANCE COMPANY

9200 Oakdale Avenue

Mail Stop: CA2-4379

Chatsworth, CA 91311

Inst #: 200910270000618

Fees: \$15.00

N/C Fee: \$0.00

10/27/2009 08:52:54 AM

Receipt #: 107162

Requestor:

SPL INC

Recorded By: GILKS Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Space above this line for recorder's use only

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No. 5303775687

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to JPMorgan Chase Bank, National Association all beneficial interest under that certain Deed of Trust dated 06/07/2006 executed by ROBERT M HAWKINS AND CHRISTINE V HAWKINS, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor; to MARIN CONVEYANCING CORP., as Trustee; and Recorded 06/12/2006, Instrument 0003526, Book 20060612, Page of Official Records in the Office of the County Recorder of CLARK County, Nevada..

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part the real property described therein.

Property Address: 3263 MORNING SPRINGS DRIVE
HENDERSON, NV 89074

DT2A
34

Title Order No. 1024157 Trustee Sale No. 137803NV Loan No. 5303775687

Date: October 26, 2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.



COLLEEN IRBY, OFFICER

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On October 26, 2009 before me, C LUCAS, "Notary Public," personally appeared COLLEEN IRBY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

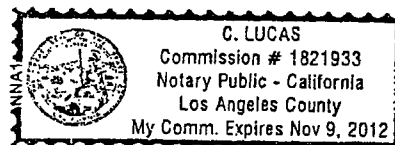


Exhibit “4”

Inst #: 201208030002972
Fee: \$17.00
N/C Fee: \$0.00
08/03/2012 03:40:09 PM
Receipt #: 1259786
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: KGP Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 177-24-514-043
N71869

Accommodation
NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on November 8, 1991, as instrument number 01962 Book 911108, of the official records of Clark County, Nevada, the Pebble Canyon HOA has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 3263 Morning Springs Drive Henderson, NV 89074 particularly legally described as: SEASONS AT PEBBLE CANYON, PLAT BOOK 53, PAGE 45, LOT 50, BLOCK 10 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Robert M Hawkins, Christine V Hawkins

Mailing address(es):
4138 Ridgewood Ave Las Vegas, NV 89120
4138 Ridgewood Ave Las Vegas, NV 89120

*Total amount due as of today's date is \$1,333.00.

This amount includes late fees, collection fees and interest in the amount of \$982.00

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: July 31, 2012



By Megan Molina, of Nevada Association Services, Inc., as agent for Pebble Canyon HOA

When Recorded Mail To:
Nevada Association Services
TS # N71869
6224 W. Desert Inn Rd, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-5544

Exhibit “5”

Inst #: 201303060001648
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$20.40 Ex: #
03/06/2013 11:35:06 AM
Receipt #: 1522804
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: DXI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
S F R Investments Pool 1, LLC
5030 Paradise Rd., B-214
Las Vegas, NV 89119

FORECLOSURE DEED

APN # 177-24-514-043
North American Title #38131

NAS # N71869

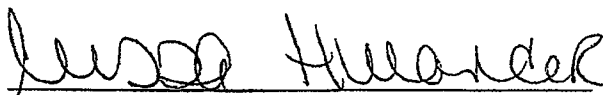
The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Pebble Canyon HOA), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded August 3, 2012 as instrument number 0002972 Book 20120803, in Clark County. The previous owner as reflected on said lien is Robert M Hawkins, Christine V Hawkins. Nevada Association Services, Inc. as agent for Pebble Canyon HOA does hereby grant and convey, but without warranty expressed or implied to: S F R Investments Pool 1, LLC (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: SEASONS AT PEBBLE CANYON, PLAT BOOK 53, PAGE 45, LOT 50, BLOCK 10 Clark County

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Pebble Canyon HOA governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 9/20/2012 as instrument # 0001446 Book 20120920 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Pebble Canyon HOA at public auction on 3/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$3,700.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: March 1, 2013



By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On March 1, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal)

(Signature)



M. Blanchard

SESSOR'S COPY

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 177-24-514-043
b. _____
c. _____
d. _____

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
Other _____

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property \$ 3,700.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 3,700.00
d. Real Property Transfer Tax Due \$ 20.40

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %
The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Agent

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Nevada Association Services
Address: 6224 W. Desert Inn Rd.
City: Las Vegas
State: NV Zip: 89146

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: S F R Investments Pool 1, LLC
Address: 5030 Paradise Rd., B-214
City: Las Vegas
State: NV Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

North American Title Company _____ Escrow # 38131 / N71869
8485 W. Sunset Road #111 _____
Las Vegas, NV 89113 _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

AA_0090

Exhibit “6”

2013 WL 2296313

Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

WEeping HOLLOW AVENUE TRUST, Plaintiff,

v.

Ashley B. SPENCER, et al., Defendants.

No. 2:13-CV-00544-JCM-
VCF. | May 24, 2013.

Attorneys and Law Firms

Michael V. Infuso, Zachary P. Takos, Greene Infuso, LLP,
Las Vegas, NV, for Plaintiff.

Chelsea Crowton, Wright, Finlay & Zak, LLP, Las Vegas,
NV, Zachary T. Ball, The Ball Law Group, Las Vegas, NV,
for Defendants.

Opinion

ORDER

MAHAN, District Judge.

*1 Presently before the court is defendant Wells Fargo Bank's ("defendant") motion to expunge lis pendens. (Doc. # 6). Plaintiff Weeping Hollow Avenue Trust ("plaintiff") filed a response in opposition (Doc. # 13), and defendant filed a reply (Doc. # 17).

Also before the court is defendant's motion to dismiss with prejudice. (Doc. # 9). Plaintiff filed a response in opposition (Doc. # 15), and defendant filed a reply (Doc. # 19).

Also before the court is plaintiff's motion for summary judgment. (Doc. # 14). Plaintiff filed the summary judgment against defendant First American Title Insurance Company. No response has been filed even though the response date has elapsed.

Also before the court is plaintiff's motion to remand to state court. (Doc. # 16). Defendant filed a response in opposition. (Doc. # 20).

Also before the court is plaintiff's emergency motion for temporary restraining order. (Doc. # 21).

Also before the court is plaintiff's emergency motion for preliminary injunction. (Doc. # 22).

Also before the court is defendant's motion for hearing. (Doc. # 24).

I. Background

There are seven pending motions in this action. The oldest motion, the motion to expunge lis pendens, became ripe on April 29, 2013. Some motions, such as the emergency motion for preliminary injunction, are not currently ripe. The court finds that these motions turn on the same issue and facts. No further briefing is necessary as the current motions overlap and repeat the same arguments. The court will dispose of all motions in this order.

A. Factual Background

On November 24, 2008, Ashley Spencer ("Spencer") purchased real property located at 9234 Weeping Hollow Avenue in Las Vegas.¹ The grant, bargain, and sale deed was recorded in Clark County, Nevada. On or about December 8, 2008, Spencer executed a deed of trust and note for \$166,961. Defendant Wells Fargo loaned plaintiff the money to purchase the property. Sometime thereafter, Spencer failed to make two payment obligations: (1) Spencer failed to make her homeowner association fees ("HOA fees"); and, (2) Spencer defaulted under the note and deed of trust.

On March 3, 2010, a notice of delinquent assessment lien was properly recorded in Clark County for failing to pay the HOA fees. On June 28, 2010, a notice of default and election to sell under the homeowners association lien was properly recorded in Clark County. On February 24, 2011, a notice of foreclosure sale for being in default under a delinquent assessment lien was properly recorded in Clark County. On May 4, 2012, a second notice of foreclosure sale for being in default under a delinquent assessment lien was properly recorded in Clark County. On or about October 5, 2012, plaintiff purchased the property at the properly noticed foreclosure sale in accordance with NRS 116.3116 for approximately \$3,004. (Doc. # 1, compl. at ¶ 7).

The above referenced paragraph of facts pertains to the HOA fees. This paragraph of facts pertain to the deed of trust. On September 28, 2011, a corporate assignment of the deed of trust was properly recorded in Clark County, whereby MERS as nominee for PrimeLending transferred and assigned all

beneficial interest in the note and deed of trust to Wells Fargo. On September 10, 2012, a substitution of trustee was properly recorded in Clark County, whereby Wells Fargo substituted National Default Servicing Corporation as trustee under the deed of trust. On December 12, 2012, a notice of default and election to sell under the deed of trust was properly recorded in Clark County based on Spencer's default on the December 2008 note. Defendant Wells Fargo has scheduled a trustee sale on May 28, 2013.

B. Procedural History

*2 Plaintiff filed the instant action in state court on February 8, 2013. The complaint seeks to quiet title and declaratory relief against defendants Wells Fargo, Spencer, and First American Title Insurance Company. Defendant Wells Fargo removed the action to federal court on March 29, 2013.

In the short history of the case, the parties have filed the following motions: expunge lis pendens; motion to dismiss; motion for summary judgment; motion to remand; motion for preliminary injunction; emergency motion for a temporary restraining order; and a motion for a hearing. This motion will resolve all the following motions and dispose of the case.

II. Remand

A. Legal Standard

A complaint filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the action had it been brought in federal court in the first place. 28 U.S.C. § 1441(a). This court has original jurisdiction, pursuant to 28 U.S.C. § 1332(a), over suits between citizens of different states for which the amount in controversy exceeds \$75,000.

"The removal statute is strictly construed against removal jurisdiction." *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir.2009). "The defendant bears the burden of establishing that removal is proper." *Id.*

"[O]ne exception to the requirement of complete diversity is where a non-diverse defendant has been 'fraudulently joined.'" *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir.2001). "Joinder of a non-diverse defendant is deemed fraudulent, and the defendant's presence in the lawsuit is ignored for purposes of determining diversity, 'if the plaintiff fails to state a cause of action against a resident defendant,

and the failure is obvious according to the settled rules of the state.'" *Id.* (quoting *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir.1987)). "Further, the defendant is entitled to present the facts showing the joinder to be fraudulent." *Id.* (internal citation omitted).

B. Discussion

Plaintiff seeks to remand to state court by arguing this court does not have diversity jurisdiction under 28 U.S.C. § 1332. Plaintiff argues that it is a citizen of Nevada and that defendant Spencer is a citizen of Nevada. Plaintiff argues that Spencer is a proper defendant because plaintiff is attempting to quiet title to the property and Spencer is the former property owner. Plaintiff also alleges that no defendant has not shown the amount in controversy exceeds \$75,000.

As an initial matter, defendant Wells Fargo has submitted properly authenticated documents that demonstrate the outstanding balance on the loan is \$161,625.48. Additionally, the assessor's office values the property \$132,711. The amount in controversy easily exceeds the minimum requirement for diversity jurisdiction.

The court now turns to whether Spencer is a fraudulently joined defendant. She is. Plaintiff is attempting to quiet title and establish that its interest in the subject property is superior to that of Spencer. In plaintiff's motion for remand, it rightly asserts that Spencer is the former owner of the property —former, being the operative word.

*3 Plaintiff foreclosed on the property pursuant to NRS 116.3116 because of Spencer's delinquency in paying the HOA fees and/or dues. Plaintiff's complaint affirmatively states that it properly complied with all the requirements of NRS 116 and that the foreclosure was lawful and proper. The complaint also fails to allege that Spencer is, or has even threatened to, assert any interest or rights in the property. Plaintiff's proper foreclosure pursuant to NRS 116 extinguished Spencer's rights or interest in the property. NRS 116.3116 states "[t]he sale of a unit pursuant [to this statutory scheme] vests in the purchaser the title of the unit's owner without equity or right of redemption." Finally, Spencer's statutory period of time, which could be 90 or 120 days depending on the circumstances, has expired. Spencer is a fraudulently joined defendant and is dismissed from the action. This court has original, diversity jurisdiction and denies the motion to remand.

III. Injunctive Relief

Plaintiff has filed two motions seeking injunctive relief.² The motion for a temporary restraining order moves the court to enjoin the trustee sale scheduled by Wells Fargo for May 28, 2013. The motion for preliminary injunction moves the court to enjoin Wells Fargo from conducting a trustee sale pending resolution of this lawsuit on the merits.

A. Legal Standard

According to Federal Rule of Civil Procedure 65, a court may issue a temporary restraining order when the moving party provides specific facts showing that immediate and irreparable injury, loss, or damage will result before the adverse party's opposition to a motion for preliminary injunction can be heard. Fed.R.Civ.P.65. The purpose of a temporary restraining order is to preserve the status quo before a preliminary injunction hearing may be held. Its provisional remedial nature is designed merely to prevent irreparable loss of rights prior to judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.1984). "Thus, in seeking a temporary restraining order, the movant must demonstrate that the denial of relief will expose him to some significant risk of irreparable injury." *Associated Gen. Contractors of California v. Coalition of Economic Equity*, 950 F.2d 1401, 1410 (9th Cir.1991).

A preliminary injunction is an extraordinary remedy never awarded as a right." *Winter v. N.R.D.C.*, 555 U.S. 7, 24 (2008). The Supreme Court has stated that a plaintiff must establish that he can establish each of the following to secure an injunction: (1) a likelihood of success on the merits; (2) likelihood of irreparable injury if preliminary relief is not granted; (3) balance of hardships; and (4) advancement of the public interest. *Winter*, 555 U.S. at 20–24 (2008). Plaintiff must "make a showing on all four prongs." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.2011).

B. Discussion

The court finds that plaintiff does not have a likelihood of success on the merits. See section IV.B *infra*. Plaintiff's argument is based on its foreclosure on the property pursuant to NRS 116.3116 because of Spencer's delinquency in paying HOA fees and/or dues. Plaintiff argues that its foreclosure extinguished the bank's first position deed of trust. As discussed more thoroughly in section IV.B, the plain language of the NRS 116.3116, the legislative history and intent of the statute, and a mountain of Nevada state and federal cases all

hold to the contrary. Plaintiff does not have a likelihood of success on the merits. The motion for a preliminary injunction and the motion for a temporary restraining order are both denied.

IV. Motion to Dismiss

*4 Defendant Wells Fargo has filed a motion to dismiss plaintiff's complaint.

A. Legal Standard

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A properly pled complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citation omitted). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 129 S.Ct. at 1949 (citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, the court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 1949. Second, the court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949.

Where the complaint does not "permit the court to infer more than the mere possibility of misconduct, the complaint has alleged, but it has not shown, that the pleader is entitled to relief." *Id.* (internal quotations and alterations omitted). When the allegations in a complaint have not crossed the line from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir.2011). The *Starr* court stated, "First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Id.*

B. Discussion

Plaintiff's argues that it properly foreclosed on the property pursuant to NRS 116.3116 because Spencer became delinquent and defaulted on her HOA fee obligations. Plaintiff argues that its foreclosure extinguished the interest of the bank's first position deed of trust. Plaintiff's complaint seeks to quiet title and declaratory relief. Defendant argues that an HOA foreclosure pursuant to NRS 116 does not extinguish a first position deed of trust. The court agrees with defendant.

*5 NRS 116.3116(2) states:

A lien under this section is prior to all other liens and encumbrances on a unit except:

...

(b) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent....

The clear language of this statute states that an HOA's lien is prior to all other liens and encumbrances secured by the property, except a first security interest on the property recorded before the date on which the assessment became delinquent. In this case, Wells Fargo properly recorded its deed of trust on December 8, 2008. The plaintiff HOA recorded its notice of delinquent assessment lien on March 3, 2010. The bank's first position deed of trust was recorded almost fifteen months prior to plaintiff HOA's lien.

Additionally, plaintiff is required to (1) produce a copy of the assessment lien upon which the foreclosure was based and

(2) allege that the assessment lien chronologically precedes the deed of trust. *Centana v. Mortg. Elec. Registration Sys.*, no. 2:11-cv-02105-GMN-RJJ, 2012 WL 3730528, at *3 (D.Nev. Aug. 28, 2012). In this case, the complaint does not allege that the assessment lien chronologically predates the deed of trust. The complaint could not allege such a fact in good faith because the deed of trust was recorded almost fifteen months prior to the assessment lien.

Also, relevant is NRS 116.3116(2)(c), which carves out a limited exception to NRS 116.3116(2)(b). Read in its entirety, NRS 116.3116(2)(c) states that an HOA's unpaid charges and assessments incurred during the nine months prior to the foreclosure of a first position mortgage continue to encumber the property after the foreclosure of the first position deed of trust. This nine month period of unpaid charges is known as a "super priority lien." However, the super priority lien does not extinguish the first position deed of trust.

NRS 116.3116(2)(c) states:

Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.

*6 This subsection does not affect the priority of mechanics' or materialmen's lines, or the priority of liens for other assessments made by the association.

This subsection has already been interpreted by a court in this district. "NRS 116.3116(2)(c) creates a limited super priority lien for 9 months of HOA assessments leading up to the foreclosure of the first mortgage, but it does not eliminate a the first security interest." *Diakonos Holdings, LLC v. Countrywide Home Loans, Inc.*, no. 2:12-cv-00949-KJD-RJJ, 2013 WL 531092, at *3 (D.Nev. Feb. 11, 2013). "[T]he HOA may initiate a nonjudicial foreclosure to recover delinquent assessments and the purchaser at the sale takes the property subject to the security interest." *Id.*; see also *First 100, LLC v. Wells Fargo Bank, N.A. et al*, 2:13-cv-00431-JCM-PAL.

The plain language of NRS 116.3116(2)(c) provides an HOA with two options: (1) the HOA may initiate a non judicial foreclosure to recover the delinquent assessments and the purchaser at the sale takes the property subject to the security interest; or, (2) initiate a judicial action to pursue the assessments. In this case, plaintiff HOA properly pursued option one, but the proper of execution of option did not extinguish the security interest in the first position deed of trust. Accordingly, plaintiff's claims for quiet title and declaratory relief fail as a matter of law.

Additionally, defendant Wells Fargo has cited no fewer than seven Nevada state court cases confirming this interpretation of the NRS 116 statutory scheme and the super priority lien. Plaintiff has cited no cases in support of its position and states only that the Nevada Supreme Court has not decided the issue. The court is unpersuaded the Nevada Supreme Court would reach a different interpretation if it decide the issue.

V. Summary Judgment

Plaintiff has also moved for summary judgment against defendant First American Title Insurance Company ("FATIC"). Plaintiff asserts that defendant FATIC appeared in a title search of the subject property.

FATIC has not responded to plaintiff's motion even though the response deadline has elapsed. However, plaintiff has attached as an exhibit to its summary judgment motion a motion purporting to be filed by defendant FATIC in state court before removal to this court. The FATIC motion filed in state court seeks Rule 11 sanctions against plaintiff for frivolously and unnecessarily naming FATIC as a defendant in this case. In the motion, FATIC claims "no right, title or interest in the Property which is the subject matter of this litigation." Defendant FATIC also correctly points out that plaintiff's complaint does not assert that FATIC is, or

intends to, assert any interest in the subject property. Finally, defendant FATIC's motion points out that it has a judgment against a person with an alias of Ashley E. Spencer. However, the prior owner of the property in this litigation was Ashley B. Spencer. There is no evidence this is the same person.

*7 To the extent plaintiff is attempting to establish it has a superior right to the subject property than defendant FATIC, then the motion is granted. However, this superior right against defendant FATIC, who appears to have been unnecessarily named in this lawsuit, has no bearing whatsoever on the superiority of interests between the plaintiff HOA and defendant Wells Fargo.

VI. Lis Pendens

Plaintiffs have failed to state a cause of action. Therefore, the lis pendens recorded by plaintiffs must be expunged pursuant to NRS 14.015(2) and (3).

VII. Motion for Hearing

The court finds that the legal issues in the present action would not have been aided by oral argument. The motion is denied.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, DECREED that defendant's motion to expunge lis pendens (doc. # 6) be, and the same hereby, is GRANTED.

IT IS FURTHER ORDERED that defendant's motion to dismiss (doc. # 9) be, and the same hereby, is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment (doc. # 14) be, and the same hereby, is GRANTED consistent with the foregoing.

IT IS FURTHER ORDERED that plaintiff's motion to remand to state court (doc. # 16) be, and the same hereby, is DENIED.

IT IS FURTHER ORDERED that plaintiff's emergency motion for a temporary restraining order (doc. # 21) be, and the same hereby, is DENIED.

IT IS FURTHER ORDERED that plaintiff's emergency motion for a preliminary injunction (doc. # 22) be, and the same hereby, is DENIED.

IT IS FURTHER ORDERED that defendant's motion for a hearing (doc. # 24) be, and the same hereby, is GRANTED.

IT IS FURTHER ORDERED that the complaint be dismissed. The clerk of the court shall enter judgment and close the case.

Footnotes

- 1 The court must lean heavily on the documents provided by defendant to understand the factual background. Plaintiff's complaint provides very few specific facts. The court judicially recognizes all of the following documents: the deed of trust, the note, notice of lien, notice of default, notice of sale, assignments, second notice of sale, substitutions, foreclosure deed, notice of default, state court orders. *See Intri-Plex Technology, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir.2007) ("A court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment as long as the facts are not subject to reasonable dispute.").
- 2 Plaintiff's emergency motion for a preliminary injunction and emergency motion for a temporary restraining order are actually identical documents.

End of Document

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Exhibit “7”

2013 WL 2460452

Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

BAYVIEW LOAN SERVICING, LLC, Plaintiff,
v.
ALESSI & KOENIG, LLC et al., Defendants.

No. 2:13-CV-00164-RCJ. | June 6, 2013.

Attorneys and Law Firms

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Opinion

ORDER

ROBERT C. JONES, District Judge.

*1 This quiet title action arises out of the foreclosure of a lien for delinquent homeowner's association ("HOA") fees. Pending before the Court are cross motions for summary judgment. For the reasons given herein, the Court grants Plaintiff's motion and denies Defendant's.

I. FACTS AND PROCEDURAL HISTORY

Third-party Defendant Jesus Simiano ("Borrower") gave Third-party Defendant Silver State Financial Services ("Lender") a promissory note for \$176,000, secured by a deed of trust ("DOT"), to refinance real property located at 5124 Lost Canyon Dr., North Las Vegas, NV 89031 (the "Property"). (Compl. ¶ 9, Jan. 30, 2013, ECF No. 1; DOT 13, July 27, 2004, ECF No. 1, at 9). Mortgage Electronic Registration Systems, Inc. ("MERS") was the beneficiary of the DOT and Lender's nominee for the purpose of transferring the beneficial interest in the promissory note. (See DOT 1-3). MERS later assigned both its own interest in the DOT and Lender's interest in the promissory note to Plaintiff Bayview Loan Servicing, LLC ("Bayview"). (Compl. ¶ 10; see Assignment, Apr. 14, 2010, ECF No. 1, at 27).

Defendant Alessi & Koenig, LLC ("A & K") later caused to be recorded a Notice of Delinquent Assessment (Lien) ("NODA") against the Property on behalf of Defendant Hometown Ovation Owners Association ("HOOA") based upon \$3391.58 in delinquent fees, assessments, interest, late fees, service charges, and collection costs. (Compl. ¶ 13; see NODA, Feb. 6, 2012, ECF No. 1, at 29). A & K then caused to be recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD") against the Property on behalf of HOOA, alleging a total of \$3541.58 in delinquencies. (Compl. ¶ 14; see NOD, Mar. 12, 2012, ECF No. 1, at 31). A & K then caused to be recorded a Notice of Trustee's Sale ("NOS") as to the Property on behalf of HOOA, indicating a sale for December 5, 2012 based upon a total delinquency of \$4386.06. (Compl. ¶ 15; see NOS, Oct. 22, 2012, ECF No. 1, at 33).

Bayview contacted A & K concerning the NOS, and A & K postponed the sale until January 16, 2013. (Compl. ¶ 16). Bayview alleges it tendered the full amount due to A & K several times before that date, but that A & K refused to accept payment. (See *id.* ¶¶ 17-18). A & K sold the Property at the instruction of HOOA at the January 16, 2013 foreclosure sale to Defendant SFR Investments Pool 1, LLC ("SFR Pool 1") or Defendant SFR Investments, LLC ("SFR") (collectively, "SFR Defendants") for approximately \$10,000. (*Id.* ¶¶ 19, 22). SFR later contacted Bayview and communicated its position that the sale had extinguished Bayview's DOT. (*Id.* ¶ 123).

Bayview sued A & K, HOOA, and SFR Defendants in this Court on two causes of action: (1) Wrongful Foreclosure; and (2) Declaratory Relief.¹ A & K and HOOA jointly moved for defensive summary judgment against the wrongful foreclosure claim, and while that motion was pending, SFR Pool 1 filed its Answer, which included counterclaims and third-party claims for quiet title against Bayview, Borrower, and Lender. The Court granted the motion for summary judgment as against the wrongful foreclosure claim. The parties have now moved for summary judgment on their remaining quiet title claims.

II. LEGAL STANDARDS

*2 A court must grant summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). Material facts are those which may affect the outcome of the case. See *Anderson v. Liberty Lobby, Inc.*,

477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See id.* A principal purpose of summary judgment is “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In determining summary judgment, a court uses a burden-shifting scheme:

When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case.

C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir.2000) (citations and internal quotation marks omitted). In contrast, when the nonmoving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails to meet its initial burden, summary judgment must be denied and the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970).

If the moving party meets its initial burden, the burden then shifts to the opposing party to establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir.1987). In other words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations unsupported by facts. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings

and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Fed.R.Civ.P.* 56(e); *Celotex Corp.*, 477 U.S. at 324.

At the summary judgment stage, a court's function is not to weigh the evidence and determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.

III. ANALYSIS

*3 In Nevada, HOAs have immediate liens against real property when HOA assessments or other costs against a unit become delinquent. *See Nev.Rev.Stat.* § 116.3116(1). Under Nevada law, a lien for delinquent HOA assessments is not prior to “[a] first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent,” *id.* § 116.3116(2)(b), except:

to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien....

Id. § 116.3116(2) (unnumbered paragraph following subsection (2)(c) (emphases added)).² In other words, a first mortgage recorded before HOA assessments become delinquent is senior to an HOA lien, except to the extent of nine months of regular HOA dues immediately preceding the action to enforce the HOA lien and any HOA fees and costs related to exterior maintenance of the unit at issue or the removal or abatement of a public nuisance related to the unit at issue.³ It seems clear that the super-priority amount is unextinguished by foreclosure of a first mortgage, even if the first mortgage is otherwise senior under the first mortgage rule. The question is whether the foreclosure of an HOA lien including some super-priority amount extinguishes a first mortgage that has benefit of the first mortgage rule. The Court believes that the best interpretation of the statutes is that it does not.

Bayview's interpretation of the statute, with which the Court agrees, is that the first mortgage rule prevents a prior-recorded

first mortgage from being extinguished by foreclosure of an HOA lien that contains a super-priority amount. Under this interpretation, an HOA lien arising *before* a first mortgage is recorded is senior to the first mortgage in all traditional respects, i.e., it survives a foreclosure of the first mortgage, and its own foreclosure extinguishes the first mortgage. But an HOA lien arising *after* a first mortgage is recorded operates unorthodoxly in relation to traditional liens. The super-priority amount is senior to an earlier-recorded first mortgage in the sense that it must be satisfied before a first mortgage upon its own foreclosure, but it is *in parity with* an earlier-recorded first mortgage with respect to extinguishment, i.e., the foreclosure of neither extinguishes the other.

In practice, two options present themselves under this theory when a first mortgage is recorded before an HOA lien arises. First, an HOA may of course foreclose its lien under the statutes so providing, but the first mortgagee's lien survives such a foreclosure, and the first mortgagee may later foreclose against the buyer at the HOA foreclosure sale if that buyer (or someone else) does not satisfy the first mortgage out of the proceeds of the HOA foreclosure sale or otherwise. An HOA conducting a foreclosure sale will be made whole under the statute so long as the super-priority amount is satisfied by the foreclosure sale price, and if an HOA's foreclosure sale leaves some portion of its "super-priority" lien unsatisfied—which circumstances are unlikely ever to occur—it must pursue the unit owner for the deficiency. Second, a first mortgagee may foreclose while an HOA lien exists. In such a case, the super-priority amount of the HOA lien survives foreclosure, and the HOA may later foreclose against the buyer at the foreclosure sale if that buyer (or someone else) does not satisfy the super-priority amount out of the proceeds of the foreclosure sale or otherwise. In either case, any sub-priority amount of an HOA lien is extinguished along with any other junior liens. Those junior liens are satisfied in sequence of priority out of the foreclosure proceeds after the lien upon which the foreclosure was based is fully satisfied, and junior lien holders must pursue the defaulted party for any deficiencies, if they can.

*4 In summary, an HOA may effectively have two liens: a super-priority lien, and a sub-priority lien. The foreclosure of neither a super-priority lien nor a first mortgage extinguishes the other. They are in parity with one another in this regard. But a super-priority lien must be satisfied first out of the proceeds of the foreclosure of a junior lien. It is "first amongst equals" in this regard. The sub-priority lien, on the other hand,

like any other junior lien, is extinguished by the foreclosure of either the super-priority lien or the first mortgage.

Another court of this District recently ruled consistently with this interpretation, though with less discussion. *See Diakonos Holdings, LLC v. Countrywide Home Loans*, No. 2:12-cv-00949, 2013 WL 531092, at *2–3 (D.Nev. Feb.11, 2013) (Dawson, J.) (ruling that the foreclosure of an HOA lien containing a super-priority amount does not extinguish a first mortgage protected by the first mortgage rule). Moreover, the real estate community in Nevada clearly understands the statutes to work the way the Court finds. In the current real estate market in Nevada, most homes sold at foreclosure are purchased by investors for cash in order to renovate the homes and then resell them for a quick profit or rent them. If investors believed that HOA foreclosures extinguished first mortgages, homes sold at HOA foreclosure sales would sell for significant fractions of their fair market value, not for the tiny fractions of their fair market value approximating the HOA lien at which HOA-foreclosed homes invariably sell. That investors will not pay significant amounts, i.e. fair amounts, for HOA-foreclosed homes indicates their perception that the first mortgage survives, preventing any profit through resale. If the actors in the real estate market in Nevada believed that an HOA foreclosure extinguished the first mortgage, one would expect the Property here to have sold for something on the order of \$80,000 (assuming the home is worth roughly half of the \$176,000 for which Borrower refinanced it in 2004). But the Property sold for a mere \$10,000, only slightly more than HOOA's lien. This shows that the Nevada real estate community does not operate as if HOA foreclosures extinguish first mortgages recorded before the HOA delinquency arises.

SFR Pool 1's interpretation of the statute is different. Under its theory, the foreclosure of HOOA's lien completely extinguished Bayview's first mortgage in the same way that the foreclosure of a first mortgage extinguishes a second mortgage (although SFR Pool 1 presumably agrees that Bayview was entitled after HOOA's foreclosure sale to satisfy its first mortgage out of the proceeds after any super-priority amount was satisfied and before any sub-priority amount was satisfied). SFR Pool 1 argues that the foreclosure of an HOA lien that includes any super-priority amount—and they always will, as the super-priority amount is defined—extinguishes a first mortgage. Under this theory, an HOA may foreclose its lien, and the first mortgagee's lien would not survive, though it would be entitled to satisfaction from the proceeds after the super-priority amount is satisfied

and before any sub-priority amount is satisfied. And a first mortgagee could still foreclose the first mortgage while an HOA lien exists, but the super-priority amount of the HOA lien would survive.

*5 SFR Pool 1 argues that the Division of Real Estate has interpreted the statutes this way. But a close look at the relevant document indicates no such authoritative interpretation. *See* Dep't of Business and Indus., Real Estate Div., Adv. Op. No. 13-01 (Dec. 12, 2012). The relevant advisory opinion answers three questions: (1) whether the super-priority amount includes "costs of collecting" as defined under section 116.310313(no); (2) whether the super-priority amount may ever exceed nine months of regular dues plus removal, abatement, and maintenance costs (no); and (3) whether an HOA must institute a "civil action" as defined under Nevada Rules of Civil Procedure 2 and 3 to create the super-priority lien (no). There is *obiter dicta* on page nine of the advisory opinion supporting SFR Pool 1's view. *See id.* at 9 ("The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security."). The opinion quotes the comments to section 3-116 of the Uniform Act, noting that first mortgagees will typically pay HOA liens rather than suffer foreclosure. But that says nothing of extinguishment. A first mortgagee may pay an HOA lien rather than suffer foreclosure because it will inevitably have to foreclose itself anyway and does not wish to experience the hassle of waiting for the first foreclosure to be completed, or because it may wish to take a deed in lieu of foreclosure or authorize a short sale, and those options would be frustrated by an intermittent foreclosure by an HOA. A first mortgagee's practical desire to avoid an HOA foreclosure does not necessarily imply that the first mortgagee thinks its security would be lost thereby. The Real Estate Division engaged in no further statutory analysis. Its *obiter dicta* in an advisory opinion directed to other issues is unpersuasive.

The Court rejects this reading of the statutes. It is clear to the Court that the legislative intent was to ensure that no matter which entity forecloses, an HOA will be made whole (up to a limited amount), while also ensuring that first mortgagees who record their interest before notice of any delinquencies giving rise to a super-priority lien do not lose their security. The Court does not believe that the legislature intended the extreme result of extinguishment of a first mortgage in any case where an HOA forecloses its own lien.

The Court agrees with Bayview that interpreting the statutes as SFR Pool 1 does reads the first mortgage rule out of the statutes. The statute creating the HOA lien (subsection 116.3116(1)) is the rule. The first mortgage rule (subsection (2)(b)) is an exception to the rule. The super-priority rule (the unnumbered paragraph following subsection (2)(c)) is an exception to the exception. Because the exception to the exception here necessarily includes all instances of the rule itself—there can be no subsection (1) lien that does not include some super-priority amount, because that amount includes virtually every kind of assessment that could be delinquent, except for collection fees and costs arising therefrom—the exception under subsection (2)(b) would be totally subsumed by the exception to the exception, rendering it meaningless if its operation were not limited in a way that permits the exception to have some application. That is, in order to give each part of the statutes some effect, the Court must read them together to mean that the super-priority rule affects the priority of reimbursement, but not extinguishment. Reading the super-priority rule to affect extinguishment would read the first mortgage rule out of the statutes almost entirely.

*6 It is true that under SFR Pool 1's interpretation, the first mortgage rule would continue to have effect in a limited class of cases when an HOA forecloses a lien containing some sub-priority amount. In such cases, the first mortgage rule will still ensure that the first mortgage is satisfied before the sub-priority amount of the HOA lien, giving the first mortgage rule some effect. Imagine a property of fair market value V , with a first mortgage balance of M and an HOA lien with super-priority amount $H1$ and sub-priority amount $H2$. If the HOA forecloses, and if the foreclosure extinguishes the first mortgage, the order of reimbursement will be $H1-M-H2$. The first mortgagee is therefore no better off under the first mortgage rule in cases where $V \geq H1 + H2 + M$, because in such cases the priority of reimbursement as between $H2$ and M is of no consequence—the first mortgagee will be made whole in either case. The first mortgagee is only better off under SFR Pool 1's interpretation of the first mortgage rule in cases where $V > H1 + H2 + M$, because in such cases the first mortgagee's losses are limited to $H1$, whereas without the first mortgage rule, the first mortgagee's losses would be $H1 + H2$. So SFR Pool 1's interpretation of the statutes does retain some effect for the first mortgage rule. But the effect is only seen in cases where the fair market value of the property at the time of foreclosure is less than the amount due on the first mortgage or no more than a few thousand dollars more. Although that

circumstance is common today, it is not the historical norm, and it was not common when the statutes were first adopted in 1991, over a decade before the real estate market crash made "underwater" mortgages common. *See* 1991 Nev. Stat 535, 567-68.

The legislature cannot possibly have intended the super-priority rule to divest the equally or more conspicuous first mortgage rule of any effect except in a class of cases that was rare when the statutes were adopted. Not only would such an interpretation divest the first mortgage rule of any significant application, it would cause an extreme result that the Court does not believe the legislature intended in light of long-standing historical practice, including the practice of the actors in the real estate market even after the statutes were adopted.⁴

The Court rejects SFR Pool 1's argument that an HOA lien necessarily extinguishes a first mortgage because the HOA foreclosure statutes indicate, just as the general non-judicial foreclosure statutes do, that foreclosure gives the purchaser title "without equity or right of redemption." *Compare id.* § 116.31166(3), *with id.* § 107.080(5). These statutes have nothing to do with the extinguishment of junior liens. It simply means, in both cases, that a defaulted owner cannot redeem his default after the sale has occurred. These are simple and otherwise uninteresting recitations of the ancient common law rule that a sale after default "forecloses" (ends the possibility of) the "equity of redemption" (cure of the default). From here, SFR Pool 1 argues that it is indisputable that foreclosure of a senior lien extinguishes all junior liens. That is of course true as a general matter, but if the statutes in this case work as Bayview argues they do, and the Court believes they do, they work a twist on the general rule as between first mortgages and HOA liens. *See supra.* SFR Pool 1 also argues that Bayview's position that foreclosure of an HOA lien can never extinguish a first mortgage would render the last sentence of section 116.310312(4) meaningless. But this conclusion is both factually and legally wrong. Bayview does not appear to argue, and the Court does not believe, that foreclosure of an HOA lien can never extinguish a first mortgage. It seems plain that when delinquencies giving rise to an HOA lien occur *before* a first mortgage is recorded, foreclosure of the resulting HOA lien extinguishes the first mortgage, but SFR Pool 1 admits those circumstances are not present here.⁵ Also, the sentence at issue reads, "The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive." *Id.* § 114.310312(4). A statute permitting foreclosure is not rendered meaningless

simply because another statute permits some other lien to survive such a foreclosure. The State of Nevada may structure its foreclosure and priority laws however it sees fit. It may structure its laws to ensure that prior-recorded first mortgagees do not entirely lose their interest upon an HOA foreclosure, while also ensuring that HOAs are protected for certain costs they have incurred and up to nine months of delinquent fees.

*7 In conclusion, the Court believes Bayview's interpretation of the statutes is correct. Bayview's position appears to represent the dominant understanding of the actors in the real estate market. Bayview's interpretation also gives each section of the statutes significant application and avoids an extreme result that was almost certainly not intended by the state legislature, i.e., that the foreclosure of a small lien for even \$1000 of delinquent HOA dues could extinguish an earlier recorded security interest on the order of hundreds of thousands of dollars, when the purpose behind the super-priority statute was simply to ensure that HOA's are made whole up to a certain amount.

Finally, even if HOOA's foreclosure had extinguished Bayview's first mortgage, that would not end the matter here. Bayview would still have been entitled to satisfy its first mortgage out of the sale proceeds after satisfaction of the super-priority amount of HOOA's lien. It therefore has standing to challenge the commercial reasonableness of the foreclosure sale, and the sale for \$10,000 of a Property that was worth \$176,000 in 2004, and which was probably worth somewhat more than half as much when sold at the foreclosure sale, raises serious doubts as to commercial reasonableness. *See Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 560 P.2d 917, 91920 (Nev.1977).

CONCLUSION

IT IS HEREBY ORDERED that the Motion for Summary Judgment (ECF No. 33) is GRANTED. The mortgage of Bayview Loan Servicing, LLC against the Property at 5124 Lost Canyon Dr., North Las Vegas, NV 89031 was not extinguished by the foreclosure sale at which SFR Investments Pool 1, LLC obtained title to the Property.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 35) is DENIED.

IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

IT IS SO ORDERED.

Footnotes

- 1 The declaratory relief claim is essentially a quiet title claim. *See Kress v. Corey*, 65 Nev. 1, 189 P.2d 352, 364 (Nev.1948). Plaintiff asks the Court to declare in the alternative that under state law the trustee's sale was void or that it did not extinguish the first mortgage. (*See id.* ¶¶ 34–36).
- 2 Section 116.310312 concerns HOA fines and costs imposed when an HOA must maintain the exterior of a unit in accordance with the CC & R or remove or abate a public nuisance on the exterior of the unit where the unit owner has failed to do so. *See id.* § 116.310312(2). Section 116.3115 governs regular HOA dues. *See id.* § 116.3115.
- 3 The Court will refer to this amount as the “super-priority amount” and will refer to the section of the statute defining it as the “super-priority rule.” The Court will refer to any excess portion of an HOA lien, i.e., the total amount of a lien under subsection (1) minus the super-priority amount, as the “sub-priority amount.” The Court will refer to subsection (2)(b) as the “first mortgage rule.”
- 4 The Court also notes that the federal Contract Clause would likely be violated by any application of such a reading of the statutes, at least as to first mortgages recorded before the statutes took effect.
- 5 It appears undisputed that the DOT to Bayview's predecessor-in-interest was recorded on August 4, 2004, such that SFR Pool 1 is clearly not a bona fide purchaser protected from Bayview's interest by the recording statute, and Defendants admit that HOA dues did not become delinquent until 2006.

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Exhibit “8”

2012 WL 3730528

Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

Martin CENTENO, Plaintiff,

v.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; Bank of America, N.A.;
MTC Financial, Inc., d/b/a Trustee Corps;
Nevada Legal News; et al., Defendants.

No. 2:11-cv-02105-GMN-
RJJ. | Aug. 28, 2012.

Attorneys and Law Firms

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Opinion

ORDER

GLORIA M. NAVARRO, District Judge.

*1 This action, filed by *pro se* Plaintiff Martin Centeno, arises out of foreclosure proceedings initiated against the property located at 5966 Spanish Mustang Ct., Las Vegas, NV 89122, APN #: 161-15-410-057 ("the property"). Before the Court are the Motion to Dismiss (ECF No. 8) filed by Defendant MTC Financial, Inc. ("MTC Financial"), and the Motion to Dismiss and to Expunge Lis Pendens (ECF No. 36) filed by Defendant Bank of America, N.A. ("Bank of America"). Plaintiff's Motions for Consolidation (ECF No. 35), Temporary Restraining Order (ECF No. 39), and Preliminary Injunction (ECF No. 40) are also pending.

I. BACKGROUND

The February 2008 Deed of Trust on the property indicates that the Lender was Bank of America, the Trustee was PRLAP, Inc., and the Borrowers were Lateef Durosinmi and Ramya Durosinmi. (Ex. A to RJN, ECF No. 8-2.) On

April 22, 2010, Bank of America, as Beneficiary, signed a Substitution of Trustee naming MTC Financial as trustee in place of the original trustee, PRLAP, Inc. (Ex. C to RJN, ECF No. 8-4.) The next day, on April 23, 2010, MTC Financial (dba "Trustee Corps") recorded a Notice of Default as trustee and agent for Bank of America, as beneficiary. (Ex. B. to RJN, ECF No. 8-3.) In July 2011, a Certificate of Mediation was issued by the State of Nevada Foreclosure Mediation Program stating that the property was a "Non-Applicable Property" and that the "Beneficiary may proceed with the foreclosure process." (Ex. D. to RJN, ECF No. 8-5.) In November 2011, MTC Financial issued the Notice of Trustee's Sale, and recorded it on December 1, 2011, setting a sale date of December 27, 2011. (Ex. E to RJN, ECF No. 8-6.) The Trustee's Deed Upon Sale was issued the next day, on December 28, 2011, and recorded January 3, 2012. (Ex. F to RJN, ECF No. 8-7.)

On December 23, 2011, Plaintiff filed the instant action and a Notice of Lis Pendens on the property, claiming to be "a co-owner beneficiary of the property subject of this case having acquired the same in a HOA Trustee Sale on or about June 7, 2011." (Compl., 4: ¶ 13; Notice of Lis Pendens, ECF No. 1-2.) Attached to his Complaint, Plaintiff submits MTC Financial's November 2011 Notice of Trustee's Sale, and a Trustee's Deed Upon Sale recorded June 8, 2011 ("HOA Trustee's Deed Upon Sale"). (ECF No. 1-1.)

The HOA Trustee's Deed Upon Sale submitted by Plaintiff refers to an August 2010 Notice of Delinquent Assessment Lien and an October 2010 Notice of Default in which Absolute Collection Services, LLC, was named as trustee. (*Id.*) The amount of the unpaid debt is listed as \$5,150.00. (*Id.*) The document purports to transfer all of Absolute Collection Services, LLC's "right, title and interest" in the property to Mustang Family Trust, "pursuant to the powers granted to Estates at Stallion Mountain HOA." (*Id.*)

Plaintiff's Complaint alleges the following causes of action: (1) Defendants are not real-parties-in-interest and they have no legal standing in court; (2) The Defendants' lien, if any, has been cancelled or wiped out by the HOA trustee sale in favor of Plaintiff; (3) Quieting of title of Plaintiff; (4) Defendants have violated the unfair lending practice law; and (5) Issuance of temporary restraining order and/or injunction. (Compl., ECF No. 1-1.) Plaintiff voluntarily dismissed Defendant Mortgage Electronic Registration Systems, Inc. (ECF No. 28.) Defendant Nevada Legal News, LLC, was dismissed by

the Court for Plaintiff's failure to effect timely service. (ECF No. 34.)

II. LEGAL STANDARD

*2 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action that fails to state a claim upon which relief can be granted. *See North Star Int'l. v. Arizona Corp. Comm'n.*, 720 F.2d 578, 581 (9th Cir.1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In considering whether the complaint is sufficient to state a claim, the Court will take all material allegations as true and construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir.1986).

The Court, however, is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001). A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (citing *Twombly*, 550 U.S. at 555) (emphasis added).

A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with Federal Rule of Civil Procedure 8(a). *Hearns v. San Bernardino Police Dept.*, 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff's complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). "Prolix, confusing complaints" should be dismissed because "they impose unfair burdens on litigants and judges." *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.1996). Mindful of the fact that the Supreme Court has "instructed the federal courts to liberally construe the 'inartful pleading' of pro se litigants," *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir.1987), the Court will view Plaintiff's pleadings with the appropriate degree of leniency.

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.... However, material which is properly submitted as part of

the complaint may be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir.1990) (citations omitted). Similarly, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994). Under Federal Rule of Evidence 201, a court may take judicial notice of "matters of public record." *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.1986). Otherwise, if the district court considers materials outside of the pleadings, the motion to dismiss is converted into a motion for summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.2001).

*3 If the court grants a motion to dismiss, it must then decide whether to grant leave to amend. The court should "freely give" leave to amend when there is no "undue delay, bad faith[,] dilatory motive on the part of the movant ... undue prejudice to the opposing party by virtue of ... the amendment, [or] futility of the amendment...." Fed.R.Civ.P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). Generally, leave to amend is only denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir.1992).

III. DISCUSSION

As an initial matter, Plaintiff's standing to bring suit is unclear, since the Durosinnis were the borrowers on the Deed of Trust, and the HOA Trustee's Deed Upon Sale names Mustang Family Trust as the purchaser.¹ Plaintiff's Response to MTC Financial's motion includes a document dated June 10, 2011, and styled as "Appointment of Co-Trustee" in which Plaintiff is purportedly appointed co-trustee of the Mustang Family Trust by "the current beneficiaries," who are un-named. (Ex. 1 to Pl.'s Resp., ECF No. 11.) The signature of the purported authorizing beneficiary is illegible, the document is not notarized, and Plaintiff does not allege that the document was publicly recorded. (*Id.*) However, as discussed below, even if Plaintiff is authorized to represent the Mustang Family Trust as trustee, the Court finds that his claims fail to meet the required pleading standard, and the Complaint will be dismissed.

In his first cause of action, styled as “Defendants are not real-parties-in-interest and they have no legal standing in court,” Plaintiff alleges that Defendants colluded and conspired with each other to foreclose or sell the property at the trustee sale. (Compl., 3: ¶ 8.) Plaintiff alleges that “Defendants have no legal standing or power to do so because they have not shown that they are in possession of the pertinent Promissory Note and/or Deed of Trust and the various transfers thereof to prove that they are the present owners or beneficiaries who have the right to conduct said foreclosure.” (Compl., 3: ¶ 8.) The publicly recorded documents submitted by Defendants establish that Defendants conducted foreclosure proceedings in accordance with Nevada statutes, and Plaintiff states no valid claim that Defendants were required to produce a promissory note or deed of trust in order to foreclose. Accordingly, Plaintiff’s claim for collusion and conspiracy against Defendants must fail, and will be dismissed.

In his second cause of action, styled as “the Defendants’ lien, if any, has been cancelled or wiped out by the HOA trustee sale favor of Plaintiff,” Plaintiff cites NRS 116.3116 and NRS 116.31166 and alleges that Defendants have no right to foreclose on the property because an “HOA Trustee Sale” occurred “in favor of plaintiff,” which “has cancelled or wiped out other junior liens, including the lien, if any, of the defendants over the subject property.” (Compl., 5: ¶ 15.) This statute provides that liens against HOA units for assessments are prior to all other liens and encumbrances on a unit except those recorded before the recordation of the declaration [creating the common-interest community]. NRS 116.3116(2), 116.037. However, Plaintiff does not submit a copy of the assessment lien on which the HOA Trustee’s Deed Upon Sale is based, and does not allege that it chronologically precedes the 2008 Deed of Trust. Without such an allegation, Plaintiff cannot state a valid claim based upon this statute. To the extent that Plaintiff is alleging a cause of action based on NRS 116.31166, his cause of action fails as well. This statute provides that the “sale of a unit pursuant to NRS 116. 31162, 116.31163, and 116.31164 vests in the purchaser the title of the unit’s owner without equity or right of redemption.” NRS 116.31166. Plaintiff does not allege that the property was sold pursuant to these statutes, and the Court finds no basis on which to make such an inference. Accordingly, this cause of action must be dismissed.

*4 In his third cause of action, styled as “quieting of title of Plaintiff,” Plaintiff alleges that he “has acquired subject property free from any right or equity of redemption in a public Trustee Sale as evidenced by the Trustee’s Deed Upon

Sale,” and that therefore “the title of subject property must be quieted in the name of plaintiff and/or MUSTANG FAMILY TRUST.” (Compl., 5: ¶ 19.) As discussed above, Plaintiff’s reliance upon the HOA Trustee’s Deed Upon Sale appears to be invalid. Accordingly, this cause of action must be dismissed.

In his fourth cause of action, styled as “Defendants have violated the unfair lending practice law,” Plaintiff alleges that “Defendants have violated the Unfair Lending Practice Law because they did not make a study if the owner-borrower can afford to pay the monthly amortization in 30 years considering that the owner-borrowers will be retired in the near future and will have no means to pay amortization.” (Compl., 5–6: ¶ 21.) Plaintiff also alleges that “[Defendants] did not give an opportunity to make a loan modification by reducing the interest and/or the principal in violation of their agreement with the Office of the Attorney General or other government entity considering that they have received bail out money for this purpose.” (Compl., 6: ¶ 21.) Finally, Plaintiff alleges that “[Defendants] also have not shown to be in possession of the pertinent Promissory Note and pertinent assignments of the subject loan as now required by the Supreme Court of Nevada.” (Compl., 6: ¶ 21.) As discussed above, Plaintiff has not alleged any law or statute requiring Defendants to produce the promissory note, and the publicly recorded documents submitted by the parties demonstrate Defendants’ compliance with statutory foreclosure requirements. Also, since Plaintiff does not allege that he has standing to assert violations of lending practices laws on behalf of the borrowers, the Durosinnis, Plaintiff’s cause of action for unfair lending practices fails as well.

Plaintiff’s fifth cause of action, for “issuance of temporary restraining order and/or injunction,” is a remedy, not a cause of action. (See Compl., 6: ¶ ¶ 23–25.) Accordingly, it will be dismissed.

Because Plaintiff’s standing to assert claims on behalf of Mustang Family Trust is unclear, and because the allegations contained in the Complaint do not appear to support a likelihood that the Complaint’s deficiencies may be cured, the Court will not grant leave to amend.

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendant MTC Financial, Inc.’s Motion to Dismiss (ECF No. 8) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant Bank of America, N.A.'s Motion to Dismiss and to Expunge Lis Pendens (ECF No. 36) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Consolidation (ECF No. 35), Emergency Ex Parte Motion for

Temporary Restraining Order (ECF No. 39), and Motion for Preliminary Injunction (ECF No. 40) are **DENIED**.

***5 IT IS FURTHER ORDERED** that Plaintiff's Complaint is **DISMISSED**. The Clerk shall enter judgment accordingly, and thereafter close the case.

Footnotes

- 1 In another case filed by Plaintiff, a virtually identical complaint also refers to Mustang Family Trust, but with a different property and different borrowers on the Deed of Trust. *See Centeno v. Mortgage Electronic Registration System*, No. 2:12-cv-00056-KJD-RJJ (D.Nev.2012).

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Exhibit “9”

2013 WL 531092

Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

DIAKONOS HOLDINGS, LLC, Plaintiff,
v.
COUNTRYWIDE HOME
LOANS, INC., et al., Defendants.

No. 2:12-CV-00949-KJD-RJJ. | Feb. 11, 2013.

Attorneys and Law Firms

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Kevin Hahn, Malcolm & Cisneros, Irvine, CA, Michael E. Sullivan, Robison Belaustegui Sharp & Low, Reno, NV, Richard J. Reynolds, Burke, Williams & Sorensen, LLP, Santa Ana, CA, for Defendants.

Opinion

ORDER

KENT J. DAWSON, District Judge.

*1 Before the Court is the Motion to Dismiss (# 17) filed by Defendants Bank of America, Inc., Countrywide Home Loans, Inc., and Mortgage Electronic Registration Systems, Inc. (Collectively "Defendants"). Plaintiff Diakonos Holdings, LLC filed an opposition and Countermotion to Remand (# 23, # 24). Defendants responded (# 25) and Plaintiff replied (# 27). The Court directed Defendants to file a further reply (# 37).

I. Background

Luis and Mirna Alfaro owned a property at 2704 Coventry Green Avenue, Henderson, Nevada 89074 (the "Property"). In 2007, the Alfaros took out a mortgage on the Property and secured it with a Deed of Trust. Defendant Bank of America subsequently obtained all beneficial interest in under the Deed of Trust.

The Alfaro's defaulted on their HOA dues and the HOA recorded a lien (the "Assesment Lien") on January 24, 2011. The Alfaros did not pay off the Lien and the property was

sold to Plaintiff at a foreclosure auction on March 9, 2012. Defendants did not appear at the foreclosure sale.

On April 14, 2012, Defendants filed a Notice of Trustee's sale pursuant to the Deed of Trust. The Foreclosure Sale was scheduled for May 21, 2012. Plaintiff filed this action in state court seeking an injunction precluding the May 21, foreclosure sale and quieting title in its favor. Judge Adair entered a preliminary injunction prohibiting Defendants from conducting the sale. Defendants then removed the action here.

II. Motion to Remand

Plaintiff asks this court to use its discretion to remand this case to state court. Plaintiff acknowledges that no articulated abstention doctrine applies in this case. However, Plaintiff urges that the Court remand this case based on "principles identified by the United States Supreme Court in *Burford v. Sun Oil*, 319 U.S. 315 (1943)." Specifically, Plaintiff claims that federal adjudication would be disruptive to Nevada's efforts to establish a cohesive policy of interpretation and application of NRS 116.3116.

The Court declines to exercise its discretion to remand this case. District courts regularly predict how state courts would rule on issues of statutory interpretation. As discussed below, NRS 116.3116 is clear and the Court sees no reason that the issues in this case cannot be properly adjudicated here. Accordingly, the Countermotion to remand is denied.

III. Motion to Dismiss

A. Legal Standard

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A properly pled complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted).

*2 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 1949. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not shown—that the pleader is entitled to relief." *Id.* (internal quotation marks omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

B. NRS 116.3116

N.R.S. 116.3116(2)(b) relates to liens by homeowner's associations and reads as follows:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent ...

The statute also provides that:

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien ...

Plaintiff argues that this statute operates so that foreclosure of a delinquent assessment lien by the HOA extinguishes the first security interest on the property.¹ According to Plaintiff, because Defendants were provided with notice of the foreclosure sale and chose not to take any action, their lien was extinguished when the HOA completed its non judicial foreclosure. Plaintiff argues that foreclosure by the HOA must extinguish all other liens, including the first security interest, or else HOAs would be unable to initiate foreclosure and would not be able to recover any deficiencies until the holder of the first deed of trust foreclosed. In support of this argument, Plaintiff cites *Summerhill Village Homeowners Ass'n v. Roughly*, 270 P.3d 639 (Wash.App.Div.1, Feb. 21, 2012) (opinion corrected and superseded by *Summerhill Village Homeowners Ass'n v. Roughly*, 289 P.3d 645) (Wash.App.Div.1, Feb. 21, 2012). In *Summerhill*, the court held that a judicial foreclosure had the effect of extinguishing the interest held by the first deed of trust. However, *Summerhill* does not support Plaintiff's contentions. The Washington statute at issue in that case specifically provides that when an association pursues nonjudicial foreclosure, it is not entitled to lien priority which would extinguish the first security interest. Nevada's statutory scheme does not draw such a distinction, and even if it did, the foreclosure in this case was nonjudicial.

*3 NRS 116.3116(2)(c) creates a limited super priority lien for 9 months of HOA assessments leading up to the foreclosure of the first mortgage, but it does not eliminate the first security interest. Contrary to Plaintiff's assertion, the statutory scheme does not require an HOA to wait until the holder of the deed of trust forecloses. Instead, as in this case, the HOA may initiate a nonjudicial foreclosure to recover delinquent assessments and the purchaser at the sale takes the property subject to the security interest. There is no dispute that the Deed of Trust was recorded on August 30, 2007, and the Assessment Lien was recorded on January 24, 2011. Accordingly, the Deed is prior to the Assessment Lien and Plaintiff's claims for quiet title and declaratory relief fail as a matter of law.

IV. Conclusion

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (# 17) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Countermotion to Remand (# 24) is **DENIED**.

Footnotes

- 1 Plaintiff does not address the language of subsection 2(b) which specifically states that HOA liens do not extinguish a first security interest recorded prior to the time the assessment became delinquent.

End of Document

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Exhibit “10”

2013 WL 4048573

Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

PREMIER ONE HOLDINGS, INC., Plaintiff(s),

v.

BAC HOME LOANS SERVICING
LP, et al., Defendant(s).

No. 2:13-CV-895 JCM (GWF). | Aug. 9, 2013.

Attorneys and Law Firms

Charles D. Lombino, Lombino Law Studio, Ltd., Henderson, NV, for Plaintiff.

Edward Chang, Matthew David Lamb, Abran E. Vigil, Ballard Spahr, Las Vegas, NV, for Defendant.

Opinion

ORDER

JAMES C. MAHAN, District Judge.

*1 Presently before the court is defendant BAC Home Loans Servicing LP motion to dismiss. (Doc. # 2). Plaintiff Premier One Holdings, Inc. filed a response in opposition (doc. # 9), and the defendant filed a reply (doc. # 14).

I. Background

In 2006, non-parties Conrado and Catherine Teotico obtained a mortgage loan for \$305,992 from Countrywide Home Loans, Inc. The loan was secured by a deed of trust recorded on May 31, 2006. The deed of trust encumbers real property located at 3825 Pastel Ridge Street in Las Vegas, NV.

The deed of trust names Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee and beneficiary. On or about August 15, 2009, MERS assigned the deed of trust to defendant BAC Home Loans Servicing ("BAC Home Loans"). Countrywide Home Loans Servicing LP is the successor by merger to BAC Home Loans, meaning that it currently holds the deed of trust.

On January 4, 2012, Canyon Springs Homeowner Association recorded a notice of lien against the property

for HOA assessments that the Teoticos never paid. Canyon Springs HOA recorded a notice of default and election to sell under the HOA lien on February 27, 2012. The HOA delinquent assessments totaled \$3,190.47. At a foreclosure sale on December 14, 2012, plaintiff purchased the property for \$13,700.

Plaintiffs filed this lawsuit in state court after purchasing the property at the foreclosure sale. The claims are for quiet title and for "cancellation of instruments." Defendants removed to this court.

II. Legal Standard

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A properly pled complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citation omitted). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 129 S.Ct. at 1949 (citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, the court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 1949. Second, the court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949.

*2 Where the complaint does not "permit the court to infer more than the mere possibility of misconduct, the complaint has alleged, but it has not shown, that the pleader is entitled to relief." *Id.* (internal quotations and alterations omitted). When the allegations in a complaint have not crossed the

line from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir.2011). The *Starr* court stated, "First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Id.*

III. Discussion

Plaintiff argues that a properly conducted foreclosure pursuant to NRS 116.3116 permits an HOA's lien for delinquent assessments to extinguish a first position deed of trust. Defendant argues that a properly conducted foreclosure sale pursuant to NRS chapter 116 does not extinguish a first position deed of trust. The court agrees with defendant.

"In Nevada, HOAs have immediate liens against real property when HOA assessments or other costs against a unit become delinquent." *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, no. 2:13-cv-00164-RJ, 2013 WL 2460452, at *3 (D. Nev. June 6, 2013) (citing NRS 116.3116(1)). Under the NRS chapter 116 statutory scheme, an HOA lien is prior to all other liens and encumbrances on a unit except "a first security interest on the unit recorded before the date on which the assessment sought to be enforcement became delinquent...." NRS 116.3116(2)(b).

"Also relevant is NRS 116.3116(2)©, which carves out a limited exception to NRS 116.3116(2)(b)." *Weeping Hollow Ave. Trust v. Spencer*, no. 2:13-cv-00544-JCM-VCF, 2013 WL 2296313, at *5 (D.Nev. May 24, 2013). Subsection (2)© states in relevant part that an HOA lien "is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien...." NRS 116.3116(2)©.

NRS 116.3116(2)© creates a super priority lien "to the extent of" charges incurred by the HOA pursuant to NRS 116.310312 (the cost of removal or abatement of a public nuisance related to the unit at issue), NRS 116.3115 (assessments for common expenses), or, for nine months of regular HOA dues immediately proceeding a foreclosure or trustee sale. The words "to the extent of" are words of limitation and limit the amount of the HOA lien that is given "super priority" status over a first security interest. The only part of the HOA lien that is a super priority lien is the part expressly provided for in NRS 116.3116(2)©, which are charges and/or fees pursuant to NRS 116.310312, NRS 116.3115, and nine months of regular HOA dues that became due "immediately preceding institution of an action to enforce the lien." No other part of an HOA lien is prior to or given super priority status above a first security interest.

*3 The super priority lien affords an HOA significant protections. First, the HOA may foreclose on the property with delinquent assessments (either through a non judicial or judicial action) to recover its lien, and the limited super priority lien is superior to the first position deed of trust. If an HOA forecloses on the property, then the purchaser takes the property subject to the prior security interest. *See Weeping Hollow*, 2013 WL 2296313; *First 100, LLC v. Wells Fargo Bank, N.A.*, no. 13-cv-431-JCM-PAL, 2013 WL 3678111 (D.Nev. July 11, 2013). The HOA foreclosure does not extinguish the prior deed of trust even if part of the HOA lien qualifies as a limited super priority lien under subsection (2)©. *Id.*

Second, the HOA may wait until the bank (or other holder of the note and deed of trust) forecloses on the property. In such a case, the first cut of the proceeds from the sale must be paid to satisfy the super priority amount of the HOA lien and the remainder of the proceeds are dedicated to satisfying the first position deed of trust (and thereafter and junior liens in accordance with payment priorities).

Either option affords the HOA protections to recover a portion of its assessments. However, if the HOA pursues the first course of action and conducts a foreclosure pursuant to NRS chapter 116, the HOA foreclosure does not extinguish the first position deed of trust. The purchaser at the HOA foreclosure takes the property subject to the first security interest.

IV. Absurd Results

Every federal court in this district to decide this issue has held that an HOA's super priority lien does not extinguish

a first position deed of trust. See *Diakonos Holdings, LLC v. Countrywide Home Loans, Inc.*, no. 2:12-cv-00949-KJD-RJJ, 2013 WL 531092 (D.Nev. Feb. 11, 2013); *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, no. 2:13-cv-00164-RCJ, 2013 WL 2460452 (D. Nev. June 6, 2013); *Weeping Hollow Ave. Trust v. Spencer*, no. 2:13-cv-00544-JCM-VCF, 2013 WL 2296313 (D.Nev. May 24, 2013); *Kal-Mor-USA, LLC v. Bank of America, N.A.*, no. 2:13-cv-0680-LDG-VCF, 2013 WL 3729849; see also *Centano v. Mortgage Electronic Registration Systems, Inc.*, no. 2:11-cv-02105-GMN-RJJ, 2013 WL 3730528 (D.Nev. Aug. 28, 2012) (relying on, and justifiably so, the importance of the chronological order of recordation dates in a bank's deed of trust and an HOA's assessment); but see *SFR Investments Pool 1, LLC v. Wells Fargo Bank, N.A. et al.*, no. 2:13-cv-01153-APG-PAL (granting injunctive relief in favor of the HOA).

This court is aware that some state courts have interpreted the NRS 116.3116 in a way that permits the HOA super priority lien to extinguish the bank's prior deed of trust, even though most state courts have agreed with the interpretation of the federal courts. This court is also aware that the Nevada Supreme Court has granted injunctions that enjoin a bank from foreclosing or conducting a trustee sale if an HOA has foreclosed on its super priority lien under the statute.

*4 "Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language." *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (Nev.2007). The plain and clear meaning of the statute is that it affords an HOA a super priority lien of nine months of delinquent assessments, but nothing more than that. The plain language of the statute does not permit an HOA foreclosure of its super priority lien to extinguish a prior recorded deed of trust.

However, even if the statute were ambiguous, there is still only one acceptable interpretation of the statute. "[A] statute's language should not be read to produce absurd or unreasonable results." *Levin*, 168 P.3d at 716; *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."); *U.S. v. Casasola*, 670 F.3d 1023, 1029 (9th Cir.2011) ("Our law, however, recognizes the principle that courts do not construe statutes in a manner that would lead to absurd results."). To construe NRS 116.3116 to permit an HOA foreclosure to

extinguish a first position deed of trust would be an absurd result for at least the following four reasons.

First, from a practical standpoint, to permit an HOA delinquent assessment, which normally arises years after the recordation of the deed of trust, and the amount of the HOA delinquent assessment will almost always be a small fraction of the amount outstanding under the note and deed of trust, would be completely absurd.¹ Further, "Nevada is a race notice state." *Buhecker v. R.B. Petersen & Sons Const. Co., Inc.*, 112 Nev. 1498, 1500, 929 P.2d 937, 939 (Nev.1996) (citing NRS 111.320; 111.325)). Permitting an HOA super priority lien to wipe out a prior deed of trust contravenes the principles and purpose of a race-notice jurisdiction. The court finds that it would be unjust and absurd to permit an HOA super priority lien to extinguish a first position deed of trust, and potentially violate due process.²

The court finds it instructive to demonstrate how the absurdity that would result in this case from a contrary interpretation of the statute. In this case, the delinquent assessments comprising the HOA lien totaled \$3,190.47. The court will assume that the entire \$3,197.47 qualifies as the super priority lien under NRS 116.3116(2)©, though it is not clear the entire \$3,197.47 would even qualify as super priority under the statute. The deed of trust is for \$305,992. The HOA lien is worth approximately one-one hundredth (1/100) of the value of the deed of trust. Additionally, the deed of trust was recorded on or about May 31, 2006. The HOA recorded its lien on or about January 4, 2012, which is about five and one half years after the recordation of the deed of trust. To permit an HOA lien recorded five and one half years later and worth one-one hundredth of the value of the first security interest to completely extinguish the first security interest would be an absurd result.

*5 Second, courts that have held in favor of the HOAs on this issue have reasoned that permitting an HOA super priority lien to extinguish a prior recorded deed of trust would incentivize the banks to foreclose at a faster pace. This logic misunderstands greater points, but, more importantly, encourages a first option by the bank—foreclosure or trustee sale by the bank—which should not be the first option.³

A bank like this defendant has made thousands of loans, potentially tens of thousands, in this district to allow Nevada residents to purchase homes. A bank like this defendant has easily made tens of thousands of loans across the country to home purchasers. Meanwhile, an HOA's scope is limited to a

single neighborhood or two. As a practical matter, it is much easier for an HOA to be the first entity to act at the first sign of distress by a homeowner. An HOA is monitoring, at most, a few dozen properties. A bank must monitor tens of thousands of properties, so it is more difficult for a bank to be quicker to foreclose than an HOA.

Additionally, courts should not incentivize banks to foreclose on property at the first sign of distress. Banks should be encouraged to work with homeowners so that the bank may recoup as much of its loan as possible and the homeowner can remain in the home. Banks should also be encouraged to participate in a program like the State of Nevada Foreclosure Mediation Program (FMP) in good faith. Banks have considerations that an HOA does not have when considering foreclosure, such as: if the property value on the market is fluctuating; the homeowner's long term ability to pay back the loan; and, whether the bank should allocate resources first to foreclosing on property owners with no chance at paying back their mortgage versus working with home owners that may merely be struggling to pay back their mortgages. An HOA has none of these considerations and merely wants to collect its statutorily entitled fees in the easiest manner possible.

Third, it would be absurd to elevate an HOA super priority lien over other entities that collect from a homeowner because the HOA takes the smallest amount of risk among the creditors and provides the least (both in volume and in importance) amount of services to the homeowner. A homeowner must pay primarily three fees associated with the purchase of a home. First, the homeowner must pay his or her mortgage. The lender bank should get the first cut and the first to be paid back because the lender (1) finances the entire, or a significant amount of, the purchase of the property, and (2) takes the greatest amount of risk in lending to the homeowner. Second, a homeowner must pay taxes on the property. These taxes contribute to state and local services that are greatly beneficial to a homeowner (such as public schools, roads, police, and firefighters). Third, the homeowner must pay fees and assessments if they live within the jurisdiction of an HOA. However, the HOA does not take any risk associated with the purchase of the property and does not advance a

significant amount of money to the homeowner. The services provided by an HOA are luxuries, not necessities. And, in any event, many neighborhoods function fine without the services of an HOA. The HOA, in exchange for a small amount of services, levies a surcharge on the homeowner based on little more than the street on which the homeowner lives. It would be absurd to elevate the entire HOA lien over a bank considering the comparatively small amount of risk taken by the HOA to finance the purchase of the property, the small amount of services provided by an HOA compared to the other entities seeking to collect from a homeowner, and the small amount (if any) capital advanced by the HOA to the homeowner.

*6 Fourth, it would be absurd to permit an HOA foreclosure to extinguish a bank's deed of trust because it would risk plunging the local economy back towards a recession. Banks will not lend money to buy houses when their deed of trust could be eliminated by HOA charges.

Mortgage lenders would become extremely reluctant to originate loans for properties in this state that are part of an HOA since the lender would face the threat of having its deed of trust extinguished by a subsequent HOA lien. This would negatively affect a potential homeowner's ability to buy in an HOA neighborhood because the risk would be too great for the lender. Lenders would become, and understandably so, hesitant and cautious about lending to the purchaser of a property in an HOA neighborhood in this state. The construction of NRS 116.3116 which extinguishes the prior deed of trust would restrict a potential homeowner's options. If the buyer could not pay for the majority of the property with the buyer's own money, then the buyer would likely be forced to purchase a home in a non-HOA neighborhood.⁴

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to dismiss (doc. # 2) be, and the same hereby, is GRANTED. The clerk of the court shall enter judgment and close the case.

Footnotes

- 1 This is true even though, in the wake of the subprime lending induced mortgage crises, banks are not sympathetic defendants. However, it is also true that, at least in this district, HOAs are not sympathetic defendants either. *See, e.g., USA v. Alcantar et al*, 2:12-cr-00113-JCM-VCF; *USA v. Priola*, 2:13-cr-00016-APG-VCF.

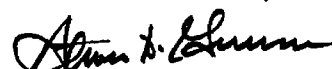
- 2 In a hearing on a temporary restraining order on this exact issue in a different case, *see First 100, LLC v. Wells Fargo Bank*, 2:13-cv-431-JCM, (doc. # 24), counsel for the HOA argued that an HOA might have a cause of action for unjust enrichment against the bank if the court declined to grant the injunction in favor of the HOA to enjoin the bank's trustee sale. The easy answer is no. The tougher answer is if a bank with a prior deed of trust would have a cause of action for unjust enrichment against an HOA if the HOA foreclosure under NRS 116.3116 extinguished the bank's prior deed of trust.
- 3 This is especially true in Nevada, which experiences one of the highest percentage rates of foreclosures in the country.
- 4 Along this same vein, it is arguably better for the HOA if its super priority lien does not extinguish the first security interest. It would likely become very difficult to sell a home in an HOA neighborhood to any purchaser other than an all (or almost all) cash buyer. Lenders would likely decline to make loans to purchase a home in an HOA neighborhood. If HOAs get the construction of the statute that they seek, it could lead to a number of indefinite "for sale" signs in their neighborhoods. Of course, it is possible that all cash buyers would buy the HOA properties. However, the vast majority of the time, all cash buyers are buying the property for investment purposes and would rent out the home. HOAs seek homeowners, not renters that are either indifferent or unaware of the HOA. It is in the HOAs best interest if the super priority lien does not extinguish the first position deed of trust.

Exhibit “11”

1 **ORDER**

2 **WRIGHT, FINLAY & ZAK, LLP**
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4 Nevada Bar No. 11547
5 5532 South Fort Apache Road, Suite 110
6 Las Vegas, NV 89148
7 (702) 475-7964; Fax: (702) 946-1345
8 ccrowton@wrightlegal.net
9 *Attorney for Defendant,*
10 *Wells Fargo Bank, N.A.*

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CLERK OF THE COURT

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **SFR INVESTMENTS POOL 1, LLC, a Nevada**
14 **limited liability company**

Case No.: A-13-679361-C
Dept. No.: XXV

15 **Plaintiff,**

16 **vs.**

ORDER DENYING THE PLAINTIFF'S
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND MOTION
FOR PRELIMINARY INJUNCTION

17 **WELLS FARGO BANK, N.A., a national**
18 **association; POLLY MORGAN, an individual;**
19 **DOES I through X; and ROE**
20 **CORPORATIONS I through X, inclusive,**

21 **Defendants.**

22 The Defendant, Wells Fargo Bank, N.A. (hereinafter "Wells Fargo"), by and through its
23 attorney of record, Chelsea A. Crowton, Esq. of the law firm of Wright, Finlay & Zak, LLP, and
24 the Plaintiff, SFR Investments Pool 1, LLC, by and through their attorney of record, David A.
25 Rosenberg, Esq., having appeared on April 17, 2013 for the hearing on the Plaintiff's
26 Application for Temporary Restraining Order and Motion for Preliminary Injunction, which was
27 continued to April 24, 2013, based on the request by the Court for Supplemental Briefing. The
28 Court having heard arguments by all parties on April 24, 2013 and April 17, 2013, the Court
having reviewed the Plaintiff's Application for Temporary Restraining Order and Motion for
Preliminary Injunction, Wells Fargo's Response to the Application for Temporary Restraining
Order and Motion for Preliminary Injunction, the Reply in Support of the Plaintiff's Application

1 for Temporary Restraining Order and Motion for Preliminary Injunction, the Supplemental Brief
2 in Support of the Plaintiff's Application for Temporary Restraining Order and Motion for
3 Preliminary Injunction, and Wells Fargo's Response to the Plaintiff's Supplemental Brief, and
4 good cause appearing, hereby rules as follows:

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Plaintiff's
6 Application for Temporary Restraining Order and Motion for Preliminary Injunction is denied.

7 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that the
8 balance of interests of both the moving and opposing parties are balanced.

9 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that the
10 Plaintiff has failed to state a likelihood of success on the merits of the underlying Complaint,
11 based on the fact that the language in N.R.S. 116.3116(2)(c) does not extinguish a first, position
12 Deed of Trust.

13 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that the
14 Plaintiff took title to the Property subject to Wells Fargo's May 2006 Deed of Trust, which was
15 executed by Polly Morgan on May 16, 2006 and recorded in the Clark County Recorder's Office
16 as Book and Instrument Number 20060524-0001668.

17 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that Wells
18 Fargo's first, position Deed of Trust survived the foreclosure sale by Canyon Willow Owners
19 Association.

20 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that due to
21 the unlikelihood of success on the merits of the underlying Complaint and denial of the
22 Application for Temporary Restraining Order and Motion for Preliminary Injunction, the
23 Defendant, Wells Fargo Bank, N.A., can lawfully proceed with a foreclosure sale on the Property
24 located at 6831 Rolling Boulder Street, Las Vegas, Nevada 89149.

25 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that the
26 Plaintiff merely took as much interest in the Property as the Borrower, Polly Morgan, possessed
27 prior to the Homeowner's Association sale.

28 ///

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that N.R.S.

107.090 et seq. and N.R.S. 116.3116 et seq. requirements, while similar with regards to notification and mailings, do not support the Plaintiff's arguments that a Foreclosure Deed executed pursuant to a sale by a Homeowner's Association extinguishes a first, position Deed of Trust.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that N.R.S.

116.310312's abatement lien statute does not lend support to the theory that N.R.S. 116.3116(2)(c) extinguishes Wells Fargo's Lien or any first, position Deed of Trust.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that

notwithstanding the foregoing, this Order is stayed and Wells Fargo is enjoined from foreclosing, selling, transferring, or otherwise conveying the Property until May 21, 2013 at 9:00 A.M.

DATED this 4th day of June, 2013.


DISTRICT COURT JUDGE

Respectfully Submitted:


WRIGHT, FINLAY & ZART LLP

Chelsea A. Crowton, Esq.
Nevada Bar No. 11547
5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148
Attorney for Defendant, Wells Fargo Bank, N.A.

Approved as to form, but all rights reserved for appellate purposes:

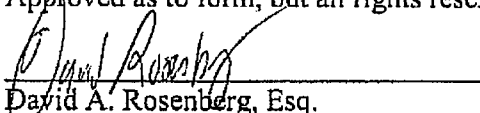
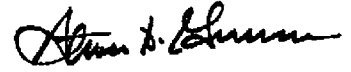

David A. Rosenberg, Esq.
Nevada Bar No. 10738
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*Attorney for Plaintiff,
SFR Investments Pool I, LLC*

Exhibit “12”

1 **ORDM**



CLERK OF THE COURT

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **SFR INVESTMENTS POOL 1, LLC,**

7 **Plaintiff,**

8 **vs.**

9 **U.S. BANK, N.A., LUCIA PARKS,**

10 **Defendants.**

CASE NO. A-13-678814-C
DEPT NO. XVIII

ORDER FOR DISMISSAL
AND CANCELLATION OF NOTICE
OF PENDENCY OF ACTION

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12
13 Defendant U.S. Bank N.A.'s Motion to Dismiss with Prejudice Plaintiff's
14 Complaint, and Motion to Expunge Lis Pendens, and Defendant Lucia Parks' Joinders
15 thereto came on for a hearing before the above-entitled Court on June 4, 2013, with Judge
16 David Barker presiding. The Court, having considered all of the pleadings on file herein,
17 and having considered the arguments of counsel, hereby finds as follows:

18 1. This matter concerns property commonly known as 2270 Nashville Avenue,
19 Henderson, Nevada, 89052, Parcel No. 178-19-712-012 (the "Property").

20 2. On or about January 5, 2006, Defendant Lucia Parks obtained title to the
21 Property through a Grant Bargain Sale Deed from Albert Brandelli and Mary Brandelli
22 which was recorded in the Clark County Recorder's Office. Parks executed a Deed of
23 Trust and Note whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title
24 of Nevada as the Trustee under the Deed of Trust.

25 3. On or about February 24, 2010, a Notice of Default and Election to Sell
26 under Deed of Trust was recorded in the Clark County Recorder's Office.

27 4. On or about May 24, 2012, a Notice of Delinquent Assessment Lien was
28 recorded in the Clark County Recorder's Office.

1 5. On or about June 7, 2012, Wells Fargo Bank, N.A. recorded an Assignment
2 of Deed of Trust against the Property to U.S. Bank National Association ("U.S. Bank,
3 N.A."), as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through,
4 Certificates Series 2006-AR4 in the Clark County Recorder's Office.

5 6. On or about February 7, 2013, Nevada Association Services, Inc., agent for
6 Copper Ridge Community Homeowners Association ("HOA") recorded a Notice of
7 Trustee's Sale in the Clark County Recorder's Office.

8 7. On or about March 6, 2013, Plaintiff acquired the Property in a foreclosure
9 sale and the Foreclosure Deed was recorded in the Clark County Recorder's Office.

10 8. NRS 116.3116 governs homeowners' association liens. It states in part that
11 an assessment lien by a homeowners' association "is prior to all other liens and
12 encumbrances on a unit except...(b) A first security interest on the unit recorded before the
13 date on which the assessment sought to be enforced became delinquent..." NRS
14 116.3116(2)(b).

15 9. Here the first security interest Deed of Trust was first in time and prior to the
16 assessment lien of the homeowner's association.

17 10. While NRS 116.3116 provides that the assessment lien is prior to the first
18 security interest Deed "to the extent of any charges incurred by the association on a unit
19 pursuant to NRS 116.310312 and to the extent of the assessments for common expenses
20 based on the periodic budget adopted by the association pursuant to NRS 116.3115 which
21 would have become due in the absence of acceleration during the 9 months immediately
22 preceding institution of an action to enforce the lien," this provision refers to a judicial
23 foreclosure "action" and is not applicable when the HOA foreclosed its lien under NRS
24 116.31162-NRS 116.31168, the nonjudicial foreclosure statutes.

25 11. The HOA may have a priority for payment of its lien, but the first security
26 interest Deed was not extinguished by the foreclosure sale conducted by the HOA.
27
28

12. Plaintiff cannot quiet title or obtain declaratory relief seeking to extinguish the first security interest Deed.

13. Plaintiff has not presented a viable basis upon which the Court could grant a preliminary or permanent injunction.

14. Plaintiff has not presented a viable claim for Unjust Enrichment.

IT IS THEREFORE ORDERED that Defendant U.S. Bank, N.A.'s Motion to Dismiss With Prejudice Plaintiff's Complaint is GRANTED. And, it is further

ORDERED, that Defendant Lucia Parks' Joinder in Defendant U.S. Bank, N.A.'s Motion to Dismiss With Prejudice Plaintiff's Complaint is GRANTED. And it is further

ORDERED, that Defendant U.S. Bank, N.A.'s Motion to Expunge Lis Pendens, joined by Defendant Lucia Parks, is GRANTED. And, it is further

ORDERED, that the notice of pendency of action is hereby cancelled, and this cancellation has the same effect as an expungement of the original notice. And it is further

ORDERED, that Plaintiff shall record with the Clark County Recorder a copy of this order of cancellation of the notice of pendency of action. And, it is further

ORDERED, that this case is dismissed in its entirety.

DATED this 11th day of June, 2013


DISTRICT JUDGE

I hereby certify that on the date filed, I mailed or placed a copy of this Order in the Attorney's folder in the Clerk's Office to:

Chelsea Crowton, Esq.

(Wright, Finlay & Zak)

Diana Cline, Esq.

(Howard Kim & Associates)

D. Chris Albright, Esq.

(Albright, Stoddard, Warnick & Albright)

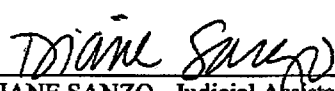
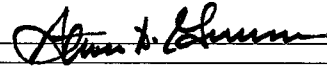

DIANE SANZO, Judicial Assistant

Exhibit “13”

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03/22/2013 08:52:31 AM



CLERK OF THE COURT

ORDR

Jory C. Garabedian, Esq.

Nevada Bar No. 10352

jgarabedian@mileslegal.com

MILES, BAUER, BERGSTROM & WINTERS, LLP

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

(702) 369-5960/Fax (702) 369-4955

MBBW File No. 13-L0013

Attorneys for:

US BANK, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a

Nevada limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking

association as Trustee for the Certificate

Holders of the Banc of America Mortgage
Securities 2008-A Trust, Mortgage Pass-

Through Certificates, Series 2008-A, CAL-

WESTERN RECONVEYANCE

CORPORATION, a California corporation,

SAN SEVINO WEST AT SOUTHERN

HIGHLANDS HOMEOWNERS

ASSOCIATION, a Nevada non-profit

corporation, SOUTHERN HIGHLANDS

COMMUNITY ASSOCIATION, a Nevada

non-profit corporation, GEORGE A.

SHERWOOD, an individual, SHARON L.

SHERWOOD, an individual, DOES I through

X; and ROE CORPORATIONS I through X.
inclusive,

Defendants.

) Case No.: A-12-673671-C

) Dept. No.: XXVII

) **ORDER DENYING MOTION FOR**
) **PRELIMINARY INJUNCTION AND**
) **GRANTING COUNTER-MOTION TO**
) **DISMISS**

**ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND GRANTING
COUNTER-MOTION TO DISMISS**

In this action, after review and consideration of Plaintiff SFR Investments Pool 1, LLC's ("Plaintiff") Motion for Preliminary Injunction, Defendant US Bank, N.A.'s ("US Bank") Opposition thereto and Countermotion to Dismiss, Plaintiff's Reply in Support of Motion for Preliminary Injunction and Opposition to Countermotion to Dismiss, US Bank's Reply in Support of Countermotion to Dismiss, all pleadings and papers on file herein, the oral arguments presented on March 6, 2013 by counsel for Plaintiff Diana S. Cline, Esq. of Howard Kim & Associates and counsel for US Bank Jory C. Garabedian, Esq. of Miles, Bauer, Bergstrom & Winters, LLP, and after taking the matter under advisement, the Court hereby finds as follows:

FINDINGS OF FACT

1. The instant action concerns title to real property commonly known as 11577 Capanna Rosso Place, Las Vegas, Nevada 89141 (APN 191-05-217-040) (hereinafter the "Subject Property").

2. US Bank, through a recorded Assignment, is the record beneficiary of a \$885,000.00 first mortgage/deed of trust recorded against the Subject Property on October 23, 2007 in the Office of the Clark County Recorder as document/instrument 20071023-0000688 (hereinafter the "Deed of Trust") and executed by former record Subject Property owners George A. Sherwood and Sharon Sherwood.

3. Non-judicial foreclosure proceedings under the terms of the Deed of Trust were commenced on or around September 17, 2009 by the recording of a Notice of Default and by the recording of a Notice of Trustee's Sale on August 8, 2012. However, the foreclosure sale under the Deed of Trust has not yet gone forward.

4. On or around April 9, 2010, Southern Highlands Community Association through its agents and trustee (hereinafter collectively the "HOA"), recorded a Notice of Delinquent Assessment Lien claiming a lien in the amount of \$1,225.19 for collection and/or attorney fees, assessments, interest, late fees, service charges and collection costs.

5. On or around November 16, 2010, the HOA recorded its Notice of Default and Election to Sell indicating that it intended to foreclose on the Notice of Delinquent Assessment Lien. Said Notice of Default indicates that the total amount due and owing had increased to \$2,550.06 and that such amounts would continue to increase until the homeowners' account became current.

6. The HOA then recorded a Notice of Trustee's Sale on September 29, 2011 noting that the total amount due and owing had again increased to \$4,542.06.

7. On September 24, 2012, a Trustee's Deed Upon Sale was recorded stating that the HOA foreclosure sale was held on September 5, 2012 where Plaintiff paid \$6,000.00 to purchase the Subject Property for the amount that was due and owing to the HOA.

8. Plaintiff commenced the instant quiet title action on or around December 14, 2012, seeking title free and clear of any interest of the defendants named herein, including US Bank's Deed of Trust. Specifically, Plaintiff alleges that the HOA foreclosure sale extinguished US Bank's Deed of Trust due to the foreclosure of the HOA's super priority lien.

9. On December 17, 2012, Plaintiff filed an Ex Parte Application for Temporary Restraining Order (TRO) and Motion for Preliminary Injunction to prevent US Bank from foreclosing on the Subject Property. The Court executed/issued the TRO on December 18, 2012 and set a hearing date.

10. On January 2, 2013, the Court granted a preliminary injunction for 30 days to allow the named defendants time to appear and respond.

11. On January 30, 2013, the Court held a Status Check on the preliminary injunction, at which the Court set a briefing schedule on the Motion for Preliminary Injunction and any Countermotions and relating briefing and further set the hearing on the matters for March 6, 2013.

CONCLUSIONS OF LAW

1. Pursuant to NRCP 65, EDCR 2.10, NRS 33.010 and Nevada case law, when deciding to grant or deny a preliminary injunction, the Court must consider: 1) the plaintiff's likelihood of success on the merits, 2) the reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy, and 3) the potential hardships to the relative parties, and others and the public interest.

2. The Court finds that Plaintiff does not enjoy a substantial likelihood of success on the merits. Pursuant to NRS 116.3116(2)(b), an HOA lien is prior to all other liens and encumbrances on the real property unit except, among others, "[a] first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent." Here, it is undisputed that US Bank has a first security interest through the Deed of Trust, which was recorded approximately two and a half years before the HOA's Notice of Delinquent Assessment Lien and therefore the Deed of Trust would generally have priority over the HOA lien.

3. However, NRS 116.3116(2)(c) creates, for an association, a super priority lien "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, which would have become due in the absence of acceleration during the 9 months immediately preceding *institution of an action* to enforce the lien." (*emphasis added*). Massachusetts and Washington require a civil action or judicial foreclosure before a super priority lien is triggered and foreclosed. See *Trustees of MacIntosh Condominium Association v. FDIC*, 908 F. Supp. 58, 63 (D. Mass. 1995); *In Re Stern*, 44 B.R. 15, 19 (Bankr.D.Mass. 1984); see also *Summerhill Vill. Homeowners Ass'n v. Roughley*, 289 P.3d 645, 649 (Wash. Ct. App. 2012). Although the Court acknowledges that authority from other jurisdictions is not binding, the Court finds persuasive the jurisprudence in Massachusetts and Washington requiring judicial foreclosures to trigger and foreclose super priority liens.

4. The Court also acknowledges the recent December 2012 Advisory Opinion from the Nevada Real Estate Division ("Division") wherein the Division opined that a civil action was not necessary to trigger an association's super priority lien, and that it could be triggered by commencing a non-judicial foreclosure. However, the Court is not bound by an opinion that contains a disclaimer at the end of the opinion stating it does not have the force of law. The Court has the ability to review statutory interpretations de novo.

5. Both State and Federal constitutional due process guarantees are offended if the first security mortgagee's interest may be voided by non-judicial foreclosure for an assessment lien, relatively nominal in value, without notice to the otherwise senior interest mortgagee, and if an opportunity is not provided to the mortgagee to argue its position, or to pay the assessment amounts in order to avoid the risk of losing, in this case, an \$885,000.00 first security interest in

1 the Subject Property. While the Court acknowledges that NRS 116.311635(1)(b)(2) does not
2 absolutely require notice to the holder of a recorded security interest, failure to provide notice is
3 a deprivation of due process. Accordingly, NRS 116.3116(2)(c) must be construed to require a
4 civil action to trigger and foreclose an HOA's super priority lien.

5 6. Because it is undisputed that Plaintiff acquired its ownership interest in the
6 Subject Property through a non-judicial foreclosure HOA sale, and not a judicial foreclosure
7 sale, Plaintiff does not enjoy a substantial likelihood on the merits.

8 7. For purposes of determining whether to grant injunctive relief, the Court further
9 finds that although real property is considered unique and the loss of which is often not
10 compensable by a monetary award, Plaintiff can be compensated through pecuniary damages in
11 this case.
12

13 8. The Court further finds that after balancing the hardships between the parties, US
14 Bank stands to lose an interest valued around \$885,000.00 whereas Plaintiff's purchase price was
15 merely \$6,000.00. The balance of hardships therefore tips in favor of US Bank to warrant the
16 denial of a preliminary injunction.
17

18 9. Finally, because the Court hereby concludes as a matter of law that an association
19 must conduct a judicial foreclosure to trigger and foreclose any super priority lien claimed, and
20 because it is undisputed that Plaintiff acquired its ownership interest in the Subject Property
21 through a non-judicial foreclose sale, the Court finds that Plaintiff has failed to state a claim
22 upon which relief can be granted as to US Bank.
23

24 **ORDER**

25 NOW WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of
26 Law, the Court hereby DENIES Plaintiff's Motion for Preliminary Injunction, DISSOLVES any
27
28

1 TRO and/or preliminary injunction previously in effect in this matter, and further GRANTS US
2 Bank's Countermotion to Dismiss Plaintiff's Complaint with prejudice. However, the parties to
3 this action are invited to seek a stay pending appeal if they so wish.

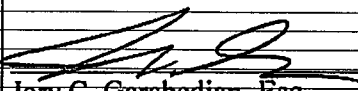
4 IT IS SO ORDERED.

5 DATED: March 20, 2013

Nancy Alf
6 DISTRICT COURT JUDGE

7
8 Respectfully submitted:

9 MILES, BAUER, BERGSTROM &
10 WINTERS, LLP

11 
12 Jory C. Garabedian, Esq.
13 Nevada Bar No. 10352
14 2200 Paseo Verde Parkway, Suite 250
15 Henderson, Nevada 89052
16 Attorneys for US Bank, N.A.
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Jessica A. Moore

From: process@renocarson.com
Sent: Monday, March 31, 2014 1:39 PM
To: Thessalonica A. Elpidio
Subject: Reno/Carson Messenger is giving you STATUS!!!

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If your case is in regards to service of process, a hard copy of the affidavit is soon to follow. :)

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Case #: 14CV65

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Dayton, NV, 89403

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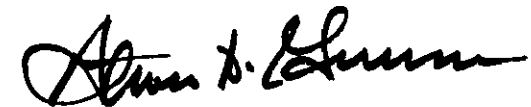
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Reno, NV 89509
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--we make deadlines--

TAB 6



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

DSO

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national
association,

Plaintiff,

v.

CASE NO. A692304
DEPT NO. XXIV

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
DOES 1 through 10; and ROE
BUSINESS ENTITIES 1 through 10,
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Declaratory relief/quiet title**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **6/1/15; 6/2/15**

TIME REQUIRED FOR TRIAL: **2-3 days**

DATES FOR SETTLEMENT CONFERENCE: **None Requested**

Counsel for Plaintiff:

Holly Ann Priest, Esq., Ballard Spahr

Counsel for Defendant:

Katherine C.S. Carstensen, Esq., Howard Kim & Associates

Counsel representing all parties have been heard and after
consideration by the Discovery Commissioner,

. . .

RECEIVED
JUN 29 2015
CLERK OF THE COURT
DISCOVERY
COMMISSIONER

1 IT IS HEREBY ORDERED:

2 1. all parties shall complete discovery on or before
3 5/2/16.

4
5 2. all parties shall file motions to amend pleadings or
6 add parties on or before 2/2/16.

7 3. all parties shall make initial expert disclosures
8 pursuant to N.R.C.P. 16.1(a)(2) on or before 2/2/16.

9 4. all parties shall make rebuttal expert disclosures
10 pursuant to N.R.C.P. 16.1(a)(2) on or before 3/3/16.

11 5. all parties shall file dispositive motions on or
12 before 6/1/16.

13
14 Certain dates from your case conference report(s) may have
15 been changed to bring them into compliance with N.R.C.P. 16.1.

16 Within 60 days from the date of this Scheduling Order, the
17 Court shall notify counsel for the parties as to the date of
18 trial, as well as any further pretrial requirements in addition
19 to those set forth above.

20 Unless otherwise directed by the court, all pretrial
21 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
22 least 30 days before trial.

23
24 Motions for extensions of discovery shall be made to the
25 Discovery Commissioner in strict accordance with E.D.C.R. 2.35.
26 Discovery is completed on the day responses are due or the day a
27 deposition begins.

28 . . .

1 Unless otherwise ordered, all discovery disputes (except
2 disputes presented at a pre-trial conference or at trial) must
3 first be heard by the Discovery Commissioner.
4

5 Dated this 26 day of June, 2015.

6
7 
8 DISCOVERY COMMISSIONER

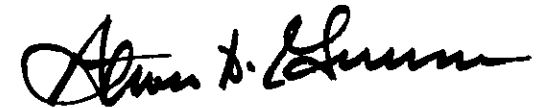
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on the date filed, I placed a copy of
11 the foregoing DISCOVERY SCHEDULING ORDER in the attorney
12 folder(s), mailed or e-served as follows:

13 Holly Ann Priest, Esq.
14 Katherine C.S. Carstensen, Esq.

15 
16 COMMISSIONER DESIGNEE
17
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TAB 7



CLERK OF THE COURT

1 CCAN
Abran E. Vigil
2 Nevada Bar No. 7548
Lindsay Demaree
3 Nevada Bar No. 11949
Holly Ann Priest
4 Nevada Bar No. 13226
BALLARD SPAHR LLP
5 100 North City Parkway, Suite 1750
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6 Telephone: (702) 471-7000
Facsimile: (702) 471-7070
7 E-Mail: vigila@ballardspahr.com
E-Mail: demareel@ballardspahr.com
8 E-Mail: priesth@ballardspahr.com

9 *Attorneys for Plaintiff and Counter-Defendant*
JPMorgan Chase Bank N.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

10
11 JPMORGAN CHASE BANK, NATIONAL)
12 ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

13 Plaintiff,

DEPT NO. XXIV

14 vs.

15 SFR INVESTMENTS POOL 1, LLC, a)
16 Nevada limited liability company; DOES 1)
through 10, ROE BUSINESS ENTITIES 1)
17 through 10, inclusive,)

18 Defendants.

19 SFR INVESTMENTS POOL 1, LLC a)
Nevada limited liability company,)

20 Counter-Claimant,

21 vs.

22 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
23 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
24 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

25 Counter-Defendant/Cross-)
26 Defendants.)
27)
28)

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

ANSWER TO AMENDED COUNTERCLAIM

Plaintiff/Counter-Defendant JPMorgan Chase Bank, N.A. ("Chase"), by and through its attorney of record, hereby submits its Answer to the Defendant/Counter-Claimant SFR Investments Pool 1, LLC's ("SFR") Amended Counterclaim as follows:

I. PARTIES

1. Chase denies that SFR is the current title owner of the property commonly known as 3263 Morning Springs Drive, Henderson, NV 89074; Parcel No. 177-24-514-043. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 1 of the Counterclaim and therefore denies them.

2. Chase admits the allegations of Paragraph 2 of the Counterclaim.

3. Chase is without sufficient information to admit or deny the allegations in Paragraph 3 of the Counterclaim and therefore denies them.

4. Chase is without sufficient information to admit or deny the allegations in Paragraph 4 of the Counterclaim and therefore denies them.

5. Chase is without sufficient information to admit or deny the allegations in Paragraph 5 of the Counterclaim and therefore denies them.

II. GENERAL ALLEGATIONS

SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

6. Chase denies that SFR lawfully acquired the Property at the Association foreclosure sale. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 6 of the Counterclaim and therefore denies them.

7. Chase submits that the foreclosure deed recorded on the Property as Instrument No. 201303060001648 is a public record that speaks for itself. Chase denies any allegation inconsistent with this record and is without sufficient information to admit or deny the remaining allegations of Paragraph 7 of the Counterclaim and therefore denies them.

8. Chase submits that NRS 116.3116(1) speaks for itself, and Chase denies

1 the allegations of Paragraph 8 to the extent they misstate the statute's terms or are
2 not read in connection with other relevant laws, including the U.S. Constitution and
3 the Nevada Constitution.

4 9. Chase submits that NRS 116.3116, NRS 116.31162-116.31168 speak for
5 themselves, and Chase denies the allegations of Paragraph 9 to the extent they
6 misstate the statutes' terms or are not read in connection with other relevant laws,
7 including the U.S. Constitution and the Nevada Constitution. Chase further submits
8 that the Association's governing documents and Notice of Delinquent Assessments
9 are public record that speak for themselves. Chase denies any allegation inconsistent
10 with these records and is without sufficient information to admit or deny the
11 remaining allegations of Paragraph 9 of the Counterclaim and therefore denies them.

12 10. Chase denies the allegations of Paragraph 10 of the Counterclaim.

13 11. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies
14 the allegations of Paragraph 11 to the extent they misstate the statute's terms or are
15 not read in connection with other relevant laws, including the U.S. Constitution and
16 the Nevada Constitution.

17 12. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies
18 the allegations of Paragraph 12 to the extent they misstate the statute's terms or are
19 not read in connection with other relevant laws, including the U.S. Constitution and
20 the Nevada Constitution.

21 13. Chase submits that NRS 116.1104 and NRS 166.3116(2) speak for
22 themselves, and Chase denies the allegations of Paragraph 13 to the extent they
23 misstate the statutes' terms or are not read in connection with other relevant laws,
24 including the U.S. Constitution and the Nevada Constitution.

25 14. Chase submits that NRS 116.1108 speaks for itself, and Chase denies
26 the allegations of Paragraph 14 to the extent they misstate the statute's terms or are
27 not read in connection with other relevant laws, including the U.S. Constitution and
28 the Nevada Constitution.

1 15. Chase denies the allegations of Paragraph 15 of the Counterclaim.

2 16. Chase is without sufficient information to admit or deny the allegations
3 of Paragraph 16 of the Counterclaim and therefore denies them.

4 17. Chase is without sufficient information to admit or deny the allegations
5 of Paragraph 17 of the Counterclaim and therefore denies them.

6 18. Chase is without sufficient information to admit or deny the allegations
7 of Paragraph 18 of the Counterclaim and therefore denies them. Chase denies that
8 the Association or its agent NAS should distribute excess funds pursuant to NRS
9 116.31164(c) without leave of the Court.

10 19. Chase denies the allegations as they relate to Chase. Chase is without
11 sufficient information to admit or deny the remaining allegations of Paragraph 19 of
12 the Counterclaim and therefore denies them.

13 20. Chase denies the allegations as they relate to Chase. Chase is without
14 sufficient information to admit or deny the remaining allegations of Paragraph 20 of
15 the Counterclaim and therefore denies them.

16 21. Chase is without sufficient information to admit or deny the allegations
17 of Paragraph 21 of the Counterclaim and therefore denies them.

18 22. Chase denies the allegations of Paragraph 22 of the Counterclaim.

19 23. Chase denies the allegations of Paragraph 23 of the Counterclaim.

20 24. Chase is without sufficient information to admit or deny the allegations
21 of Paragraph 24 of the Counterclaim and therefore denies them.

22 25. Chase is without sufficient information to admit or deny the allegations
23 of Paragraph 25 of the Counterclaim and therefore denies them.

24 26. Chase is without sufficient information to admit or deny the allegations
25 of Paragraph 26 of the Counterclaim and therefore denies them.

26 27. Chase denies the allegations of Paragraph 27 of the Counterclaim.

27 28. Chase submits that NRS 116.31166 speaks for itself, and Chase denies
28 the allegations of Paragraph 28 to the extent they misstate the statute's terms or are

1 not read in connection with other relevant laws, including the U.S. Constitution and
2 the Nevada Constitution.

3 **Interests, Liens and Encumbrances Extinguished by the Super-Priority Association**
4 **Lien**

5 29. Chase submits that the Grant, Bargain Sale Deed recorded on the
6 Property as Instrument No. 200606120003525 is a public record that speaks for
7 itself. Chase denies any allegation inconsistent with this record and is without
8 sufficient information to admit or deny the remaining allegations of Paragraph 29 of
9 the Counterclaim and therefore denies them.

10 30. Chase admits the allegations of Paragraph 30 of the Counterclaim.

11 31. Chase submits that the declaration of CC&Rs is a public record that
12 speaks for itself. Chase denies any allegation inconsistent with this record and is
13 without sufficient information to admit or deny the remaining allegations of
14 Paragraph 31 of the Counterclaim and therefore denies them.

15 32. Chase is without sufficient information to admit or deny the allegations
16 of Paragraph 32 of the Counterclaim and therefore denies them.

17 33. Chase submits that the First Deed of Trust recorded on the Property is
18 a public record that speaks for itself. Chase denies any allegation inconsistent with
19 this record and is without sufficient information to admit or deny the remaining
20 allegations of Paragraph 33 of the Counterclaim and therefore denies them.

21 34. Chase admits the allegations of Paragraph 34 of the Counterclaim.

22 35. Chase denies the allegations of Paragraph 35 of the Counterclaim.

23 36. Chase admits the allegations of Paragraph 36 of the Counterclaim.

24 37. Chase admits the allegations of Paragraph 37 of the Counterclaim.

25 38. Chase admits the allegations of Paragraph 38 of the Counterclaim.

26 39. Chase denies the allegations of Paragraph 39 of the Counterclaim.

27 40. Chase denies the allegations of Paragraph 40 of the Counterclaim.

41. Chase repeats its answers contained in Paragraphs 1 through 40.
42. Chase submits that NRS 30.010, *et. seq.* and NRS 40.010 speaks for itself, and Chase denies the allegations of Paragraph 42 to the extent they misstate the statutes' terms or are not read in connection with other relevant laws, including the U.S. Constitution and the Nevada Constitution.
43. Chase submits that the foreclosure deed recorded on the Property is a public record that speaks for itself. Chase denies any allegation inconsistent with the record and denies the remaining allegations of Paragraph 43 of the Counterclaim.
44. Chase admits the allegations of Paragraph 44 of the Counterclaim.
45. Chase is without sufficient information to admit or deny the allegations of Paragraph 45 of the Counterclaim and therefore denies them.
46. Chase submits that NRS 116.31162, 116.31163 and 116.31164 speak for themselves, and Chase denies the allegations of Paragraph 46 to the extent they misstate the statutes' terms or are not read in connection with other relevant laws, including the U.S. Constitution and the Nevada Constitution.
47. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies the allegations of Paragraph 47 to the extent they misstate the statute's terms or are not read in connection with other relevant laws, including the U.S. Constitution and the Nevada Constitution.
48. Chase denies the allegations as they relate to Chase. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 48 of the Counterclaim and therefore denies them.
49. Chase denies the allegations of Paragraph 49 of the Counterclaim.
50. Chase admits that SFR is seeking an order from the Court quieting title in its favour, but Chase denies that SFR is entitled to such an order.

1 IV. SECOND CLAIM FOR RELIEF
2 (Preliminary and Permanent Injunction)

3 51. Chase repeats its answers contained in Paragraphs 1 through 50.

4 52. Chase denies the allegations of Paragraph 52 of the Counterclaim.

5 53. Chase admits that it claims an interest in the Property through the
6 First Deed of Trust. Chase denies the remaining allegations of Paragraph 53 of the
7 Counterclaim.

8 54. Chase is without sufficient information to admit or deny the allegations
9 of Paragraph 54 of the Counterclaim and therefore denies them.

10 55. Chase denies the allegations of Paragraph 55 of the Counterclaim.

11 56. Chase denies the allegations of Paragraph 56 of the Counterclaim.

12 57. Chase denies the allegations of Paragraph 57 of the Counterclaim.

13 58. Chase denies the allegations of Paragraph 58 of the Counterclaim.

14 59. Chase denies the allegations of Paragraph 59 of the Counterclaim.

15 60. Chase denies the allegations of Paragraph 60 of the Counterclaim.

16 61. Chase denies the allegations of Paragraph 61 of the Counterclaim.

17 Unless expressly admitted in this Answer, Chase denies all other allegations
18 in SFR's Counterclaim, including, without limitation, any allegations suggested by
19 the counterclaim's headings.

20 **AFFIRMATIVE DEFENSES:**

21 Chase is continuing to investigate SFR's claims and does not waive any
22 affirmative defenses. Chase reserves its right to amend this Answer and add any
23 subsequently discovered affirmative defenses or claims.

24 **First Affirmative Defense**

25 The Counterclaim fails to state a claim upon which relief can be granted.

26 **Second Affirmative Defense**

27 The alleged homeowner's association foreclosure sale was not reasonable, and
28 the circumstances of the sale of the property violated the Association's obligation of

1 good faith under NRS 116.1113 and duty to act in a reasonable manner.

2 **Third Affirmative Defense**

3 SFR purchased the property with notice of the interest of the senior deed of
4 trust recorded against the property and is not a bona fide purchaser for value.

5 **Fourth Affirmative Defense**

6 To the extent Chase has continued to expend funds and resources to maintain
7 and preserve the Property after the alleged Association foreclosure sale, it is entitled
8 to recoup those amounts.

9 **Fifth Affirmative Defense**

10 To the extent that SFR's interpretation of NRS § 116.3116 *et seq.* is accurate,
11 the statute and Chapter 116 as a whole are void for vagueness.

12 **Sixth Affirmative Defense**

13 SFR's claims are barred by the Due Process clause of the Nevada Constitution
14 and United States Constitution and the Takings Clause of the United State
15 Constitution.

16 **Seventh Affirmative Defense**

17 The claimed lien, including the super-priority portion of it and the sub-priority
18 portion of it, was satisfied prior to the Association foreclosure sale under the
19 doctrines of tender, estoppel, laches, or waiver.

20 **Eighth Affirmative Defense**

21 The Association foreclosure sale is void or otherwise does not operate to
22 extinguish the first deed of trust based on the provisions of the declaration of CC&Rs
23 recorded against the Property on or about November 8, 1991.

24 **Ninth Affirmative Defense**

25 The Association foreclosure sale is void or otherwise insufficient to extinguish
26 the deed of trust based on the failure to provide proper notice of the "super-priority"
27 assessment amounts in accordance with the requirements of NRS Chapter 116,
28 federal law, and constitutional law.

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Tenth Affirmative Defense

The Association foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the Association's failure to comply with all mailing, noticing and/or other requirements of Nevada and federal law.

Eleventh Affirmative Defense

The Association foreclosure sale is a voidable fraudulent transfer under the Uniform Fraudulent Transfer Act (NRS 112.140 *et seq.*).

Twelfth Affirmative Defense

The Association foreclosure sale is void to the extent the Association foreclosed on an alleged lien comprised of assessments and/or other charges discharged in bankruptcy.

Thirteenth Affirmative Defense

SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes the Association foreclosure sale from extinguishing Freddie Mac's interest in the Property and preempts any state law to the contrary.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff/Counter-Defendant Chase requests the following relief:


1. That the Court make a judicial determination that HOA sale was invalid;
2. That the Court make a judicial determination that Chase's Deed of Trust survived the HOA sale;
3. That the Court make a judicial determination that SFR took title subject to Chase's ownership interest and/or Deed of Trust;
4. That SFR recover nothing on account of its claims made in the Counterclaim;
5. For reasonable attorney's fees and costs; and
6. For any other relief that the Court deems just and proper in the case.

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DATED this 11 day of August, 2015.

BALLARD SPAHR LLP

By: 

Abran E. Vigil
Nevada Bar No. 7548
Lindsay Demaree
Nevada Bar No. 11949
Holly Ann Priest
Nevada Bar No. 13226
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100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

*Attorneys for Plaintiff and Counter-
Defendant JP Morgan Chase Bank N.A.*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11 day of August, 2015, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Answer to Counterclaim, was served to the parties following in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014	
Attorneys for SFR Investments Pool, LLC	

☐ HAND DELIVERY

☐ E-MAIL TRANSMISSION

☐ U.S. MAIL, POSTAGE PREPAID

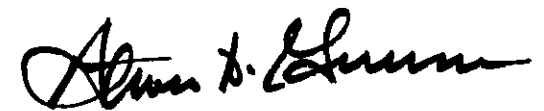
☐ Certified Mail, Receipt No. _____,
Return receipt requested

☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


An employee of BALLARD SPAHR LLP

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TAB 8



CLERK OF THE COURT

MOT
Abran E. Vigil
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Russell J. Burke
Nevada Bar No. 12710
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*Attorneys for Plaintiff and Counter-Defendant
JPMorgan Chase Bank N.A.*

DISTRICT COURT
CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10, ROE BUSINESS ENTITIES 1
through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Counter-Claimant,

vs.

JPMORGAN CHASE BANK NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1-10 and ROE BUSINESS
ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross-
Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

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MOTION FOR LEAVE TO AMEND COMPLAINT

Defendant JPMorgan Chase Bank, NA, ("Chase") moves for leave to amend its complaint to add additional allegations. This motion is based on N.R.C.P. 15, the following memorandum of points and authorities, the attached proposed amended pleading, the documents on file in this case, and any oral argument the Court may consider.

NOTICE OF MOTION

Please take notice that the undersigned will bring Motion for Leave to Amend Complaint on for hearing in Department XXIV of the above-entitled Court on the 8 day of MARCH at 9:00 AM.m.

DATED this 2nd day of February, 2016.

BALLARD SPAHR LLP

By: /s/ Russell J. Burke
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Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
*Attorneys for Plaintiff and Counter-
Defendant JPMorgan Chase Bank N.A.*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This case arises from a foreclosure sale under a homeowners association lien.
4 The subject real property is located at 3263 Morning Springs Drive, Henderson, NV
5 89074 (the "Property"). SFR Investments Pool 1, LLC ("SFR") purportedly purchased
6 the Property at a foreclosure sale to satisfy a lien held by Pebble Canyon HOA (the
7 "HOA"). In addition to the HOA's purported lien, the Property was encumbered by a
8 deed of trust owned by Freddie Mac for which Chase was beneficiary of record.
9 Chase filed a complaint against SFR for declaratory relief and quiet title prior to the
10 decision in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408
11 (2014). SFR claims in its answer that the HOA's foreclosure extinguished that deed
12 of trust pursuant to NRS 116.3116, *et seq.*

13 Since filing the operative complaint in November 2013, Chase has continued to
14 investigate the facts and legal arguments applicable to this case. Chase has
15 determined that additional allegations apply and now moves for leave to amend its
16 complaint to assert new allegations, as set forth in the proposed amended complaint
17 attached as Exhibit A. The Court should grant Chase leave to amend, as the
18 amendment will not result in undue delay or prejudice to SFR and is consistent with
19 Nevada's policy to decide a case on its merits.

20 II. BACKGROUND

21 In June of 2006, Robert and Christine Hawkins (the "Borrowers") obtained a
22 loan and provided the lender with a corresponding Deed of Trust (the "First Deed of
23 Trust"). On or about June 20, 2006, Federal Home Loan Mortgage Corporation
24 ("Freddie Mac") purchased the Hawkins Loan, and thereby acquired ownership of
25 both the note and the Deed of Trust. In October 2009, MERS, as nominee for Lender
26 and Lender's successors and assigns, assigned the First Deed of Trust to Chase. On
27 March 06, 2013, Nevada Association Services, Inc. recorded a "Foreclosure Deed"

1 that purports to convey—without warranty—the HOA’s interest in the Property to
2 SFR.

3 Pursuant to the discovery plan agreed to by the parties, discovery does not
4 close until May 2, 2016. (*See* Scheduling order, filed June 29, 2015.) Chase likewise
5 submits this motion to amend within the time frame to amend pleadings agreed to by
6 the parties. (*See id.*) Since filing the complaint currently in effect, Chase has
7 continued to investigate the underlying facts of this case and monitor the developing
8 legal theories applicable to homeowners’ association lien cases such as this. In doing
9 so, Chase has uncovered additional allegations that apply to this matter. Since the
10 filing of the complaint, which pre-dated *SFR vs. U.S. Bank*, further defenses and
11 allegations have come to light, due to the fast-developing, hotly-contested, and
12 unsettled nature of homeowners’ association lien litigation. As set forth below,
13 justice dictates that Chase should be permitted to amend.

14 **III. CHASE SHOULD BE GRANTED LEAVE TO AMEND**

15 Under N.R.C.P. 15(a), a party may amend its pleading with leave of court,
16 which “leave shall be freely given when justice so requires.” N.R.C.P. 15(a). “A
17 motion for leave to amend pursuant to N.R.C.P. 15(a) is addressed to the sound
18 discretion of the trial court.” *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828
19 (2000) (internal quotations omitted). In applying Rule 15, courts should construe the
20 standard liberally. *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507
21 P.2d 138, 139 (1973). While a court may deny leave to amend in cases involving
22 undue delay, bad faith, or dilatory motives, when such factors are absent “N.R.C.P.
23 15(a) mandates that leave shall be freely given when justice so requires.” *Adamson*
24 *v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 800 (1969) (emphasis added).

25 There is no bad faith or dilatory motive in Chase’s request for leave to amend.
26 Since Chase filed its complaint, the theories implicated by lien cases such as this one
27 have developed extensively. State and federal district courts have issued new
28 decisions and orders that continue to shape the claims and defenses of this legal

1 arena. Chase requests to amend its complaint to incorporate this evolving legal
2 landscape is made as a good faith effort to ensure that this case is comprehensively
3 litigated and decided on its merits.

4 For instance, several federal courts have found that, pursuant to federal law,
5 the HOA sale cannot extinguish an interest in property held by the Federal Home
6 Loan Mortgage Corporation ("Freddie Mac"). Freddie Mac owns the note relating to
7 the Property as well as the Deed of Trust securing that loan, while Chase serves as
8 the beneficiary of record of the Deed of Trust and servicer of the loan on behalf of
9 Freddie Mac. On September 6, 2008, the Director of Federal Housing Finance
10 Agency ("FHFA"), authorized by the Housing and Economic Recovery Act of 2008
11 ("HERA"), Pub. L. No. 110-228, 122 Stat. 2654, codified at 12 U.S.C. § 4617 *et seq.*,
12 placed Freddie Mac into conservatorship and appointed FHFA as Conservator. As
13 Conservator, FHFA succeeded by law to "all rights, title, powers, and privileges" of
14 Freddie Mac. Therefore, under 12 U.S.C. § 4617(j)(3), HOA foreclosures of "super-
15 priority" liens cannot extinguish Freddie Mac's lien absent FHFA's consent.¹ FHFA
16 has not consented to the extinguishment of Freddie Mac's interest here.² Therefore,
17 Chase seeks to amend the complaint to ensure that this issue is litigated.

18 Further, the Nevada Supreme Court recently decided a case making the value
19 of the property at the time of the HOA sale a vital issue in these cases. *Shadow*

20 ¹ See *Skylights LLC v. Byron*, No. 2:15-cv-00043-GMN-VCF (D. Nev. June 24, 2015);
21 *Williston Investment Group, LLC v. JP Morgan Chase Bank Nat'l Ass'n*, No. 2:15-cv-02038-
22 GMN-PAL (D. Nev. July 13, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-
23 2123 JCM-CWH (D. Nev. July 28, 2015); *My Global Village, LLC v. Fannie Mae*, No. 2:15-cv-
24 00211-RCJ-NJK (D. Nev. July 27, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No.
25 2:14-cv-2128-GMN-NJK (D. Nev. July 13, 2015); *Elmer v. JP Morgan Chase Bank Nat'l*
Ass'n, No. 2:14-cv-01999-GMN-NJK (D. Nev. July 13, 2015); *Fannie Mae v. SFR Investments*
Pool 1, LLC, No. 2:14-CV0-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 28, 2015);
Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae, No. 2:14-CV-01975-KJD-NJK,
2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v. Moniz*, No. 2:15-cv-1186-GMN-
GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015).

26 ² See Statement on HOA Super-Priority Lien Foreclosures,
27 [http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
28 [Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

1 *Wood HOA vs. N.Y Cmty. Bancorp*, 132 Nev. Adv. Op. 5 at 15 (2015). Based on this
2 significant issue, Chase further needs to add allegations to the complaint regarding
3 the adequacy of the sale price at the HOA Sale. Moreover, SFR should have already
4 been on notice of Chase's intent to assert an inadequacy of price argument

5 Chase's proposed amendment will not cause undue delay. SFR was the
6 purchaser at many of similar homeowners association lien foreclosure sales, is
7 involved in dozens of related cases and is undoubtedly familiar with the allegations
8 that Chase seeks to assert. In addition, the allegations involve many of the same
9 factual issues raised by the claims and previously asserted allegations. Given this
10 factual overlap, the parties will be able to complete discovery under the deadlines set
11 forth in the existing scheduling order.

12 Finally, allowing Chase to amend is just. Chase requests leave to amend to
13 assert additional allegations needed to protect its interest in the Property. Moreover,
14 Chase brings this motion within the time agreed to by the parties to amend pleadings
15 and only after conferring with SFR's counsel about the issue. Chase reached out to
16 SFR to seek a stipulation to amend this pleading, but SFR informed Chase that it
17 would be unable to stipulate the proposed Amended Complaint. As such, Chase has
18 no alternative but to move the Court, pursuant to N.R.C.P. 15(a), for leave to amend.

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IV. CONCLUSION

For the foregoing reasons, and pursuant to N.R.C.P. 15, Chase requests the Court grant this motion for leave to file an amended Complaint, attached hereto as Exhibit A.

DATED this 2nd day of February, 2016.

BALLARD SPAHR LLP

By: /s/ Russell J. Burke
Abran E. Vigil
Russell J. Burke
Holly Ann Priest
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
*Attorneys for Plaintiff and Counter-
Defendant JPMorgan Chase Bank N.A.*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 2nd day of February, 2016, and pursuant to NRCP 5(b), a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE AMENDED COMPLAINT, was served to the following parties in the manner set forth below:

HOWARD C. KIM
DIANA S. CLINE
JACQUELINE A. GILBERT
Nevada Bar No. 10593
Kim Gilbert Ebran
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Las Vegas, NV 89139

Attorneys for SFR Investments Pool, LLC

☐ HAND DELIVERY

☐ E-MAIL TRANSMISSION

☐ U.S. MAIL, POSTAGE PREPAID

☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

/s/ Sarah H. Walton
An employee of BALLARD SPAHR LLP

EXHIBIT 1

EXHIBIT 1

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8 E-Mail: priesth@ballardspahr.com

9 *Attorneys for Plaintiff and Counter-Defendant*
10 *JPMorgan Chase Bank N.A.*

11 DISTRICT COURT
CLARK COUNTY, NEVADA
JPMORGAN CHASE BANK, NATIONAL)
12 ASSOCIATION, a national association,) CASE NO. A-13-692304-C
13 Plaintiff,) DEPT NO. XXIV
14 vs.)
15 SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability company)
16 Defendants.)
17 SFR INVESTMENTS POOL 1, LLC a)
18 Nevada limited liability company,)
19 Counter-Claimant,)
20 vs.)
21 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
22 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
23 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)
24 Counter-Defendant/Cross-)
25 Defendants.)
26)
27)
28)

1 AMENDED COMPLAINT

2 Plaintiff JPMorgan Chase Bank, N.A. ("Chase"), by and through its counsel of
3 record, hereby complain against Defendant SFR Investments Pool 1, LLC ("SFR") in
4 this Amended Complaint as follows:

5 I.

6 PARTIES, JURISDICTION AND VENUE

7 1. Chase is a national banking association headquartered in Ohio and
8 doing business in Clark County.

9 2. Upon information and belief, SFR is a Nevada limited liability company
10 whose principal place of business in Nevada.

11 3. The real property that is the subject matter of this action is situated in
12 Clark County, Nevada.

13 4. This Court has personal jurisdiction over SFR because SFR is a Nevada
14 limited liability company and because this lawsuit arises out of and is connected with
15 SFR's purposeful purchase of an interest in real property situated in Clark County,
16 Nevada.

17 5. Venue is proper with this district pursuant to NRS 13.010 because the
18 property at issue in this action is located in Clark County.

19 6. Venue is also proper in this district pursuant to NRS 13.040 because
20 SFR resides in this district.

21 II.

22 GENERAL ALLEGATIONS

23 *The Property and the Deed of Trust*

24 7. This action related to the parties' rights in that certain real property
25 commonly described as 3263 Morning Springs Dr., Henderson, Nevada, 89074; APN
26 177-24-514-043 (the "Property"). The Property is legally described as:
27 Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE
28 CANYON, as shown by map thereof on file in Book 53 of
Plats, Page 45, in the Office of the County Recorded of
Clark County, Nevada.

11. On or about June 12, 2006, upon information and belief, the Property was conveyed from Nathan Van Noy to Robert and Christine Hawkins (the "Borrowers").

12. On or about June 12, 2006, a Deed of Trust (the "Deed of Trust") securing a loan in the amount of \$240,000 (the "Hawkins Loan") was recorded as Book and Instrument Number 20060612-0003526 in the Official Records of the Clark County Recorder, showing: the Borrowers as borrowers; GreenPoint Mortgage Funding, Inc. as lender; Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary as nominee for Lender and Lender's successor and assigns; and Marin Conveyancing Corp. as trustee.

13. On or about June 20, 2006, Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased the Hawkins Loan, and thereby acquired ownership of both the note and Deed of Trust. Chase became Freddie Mac's servicer for the Hawkins Loan.

a. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, was governed by Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide"). The Guide serves as a central governing document for Freddie Mac's relationship with servicers nationwide. See Guide at 1.2(a), www.freddiemac.com/singlefamily/guide.

b. The Guide provides that:
For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that *Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac.*

Guide at 6.6 (emphasis added), www.freddiemac.com/singlefamily/guide.

c. The Guide also provides that:
The Seller/Servicer is not required to prepare an assignment of the Security

Instrument to the Federal Home Loan Mortgage Corporation (Freddie Mac). However, *Freddie Mac may, at its sole discretion and at any time, require a Seller/Service, at the Seller/Service's expense, to prepare execute and/or record assignments of the Security Instrument to Freddie Mac.*

Guide at 22.14 (emphasis added), www.freddiemac.com/singlefamily/guide.

14. On or about July 1, 2009, the Borrowers defaulted under the Hawkins Loan and Deed of Trust.

15. On or about October 27, 2009, an Assignment of Deed of Trust was recorded as Book and Instrument Number 20091027-0000618 in the Official Records of the Clark County Recorder whereby MERS assigned the Deed of Trust to Chase.

The HOA Foreclosure and SFR's Purported Acquisition of the Property

16. Upon information and belief, the Property is subject to a Declaration of Covenants, Conditions, and Restrictions (the "CC&Rs") for Pebble Canyon Homeowners Association ("HOA"). The CC&Rs were recorded in the Official Records of the Clark County Recorder on or about November 8, 1991, as Book and Instrument Number 911108-01962.

17. Upon information and belief, Nevada Association Services, Inc. ("NAS") is the agent of the HOA and acted as the foreclosure trustee and/or agent, which allegedly mailed and served the foreclosure notices, if any.

18. On or about August 3, 2012, a Notice of Delinquent Assessment Lien was recorded by NAS as Book and Instrument Number 20120803-0002972 in the Official Records of the Clark County Recorder. The Notice of Delinquent Assessment Lien states that the "[t]otal amount due as of today's date is \$1,333.00. This amount includes late fees, collection fees and interest in the amount of \$982.00."

19. On or about September 20, 2012, a Notice of Default and Election to Sell Under Homeowners Association Lien was recorded by NAS as Book and Instrument Number 20120920-0001446 in the Official Records of the Clark County Recorder. The Notice of Default and Election to Sell Under Homeowners Association Lien

1 states in part that the allegedly past due "amount is \$2,126.00 as of September 15,
2 2012."

3 20. On or about February 7, 2013, NAS recorded a Notice of Foreclosure
4 Sale as Book and Instrument Number 20130207-0000892 in the Official Records of
5 the Clark County Recorder. The Notice of Sale states that the "[t]otal amount of the
6 unpaid balance of the obligation secured by the property to be sold and reasonable
7 estimated costs, expenses and advances at the time of the initial publication of the
8 Notice of Sale is \$3,142.43."

9 21. On or about March 1, 2013, NAS conducted a foreclosure sale of the
10 Property ("HOA Sale").

11 22. Upon information and belief, SFR bid \$3,700 for the Property at the
12 foreclosure sale.

13 23. Upon information and belief, at the time of the HOA Sale, the fair
14 market value of the Property was approximately \$123,000.

15 24. The amount that SFR paid for the Property was grossly inadequate
16 when compared to the fair market value of the Property at the time of the HOA Sale.

17 24. On or about March 6, 2013, NAS recorded a Foreclosure Deed on the
18 Property as Book and Instrument Number 20130306-0001648 in the Official Records
19 of the Clark County Recorder.

20 26. After the date of the HOA Sale and recordation of the Foreclosure Deed,
21 Chase continued to advance property preservation payments, including but not
22 limited to payment of taxes and homeowners' insurance.

23 27. Neither the Notice of Delinquent Assessment Lien, Notice of Default
24 and Election to Sell Under Homeowners Association Lien, or the Notice of Sale
25 (collectively, the "HOA Assessment Lien and Foreclosure Notices") provided any
26 notice of a right to cure by Plaintiff.

27 28. None of the HOA Assessment Lien and Foreclosure Notices specified
28 what portion, if any, that the HOA claimed constituted a "super-priority."

29. None of the HOA Assessment Lien and Foreclosure Notices specified whether the HOA was foreclosing on the “super-priority” portion of its lien, if any, or under the sub-priority lien.

30. Upon information and belief, Chase did not receive notice of all of the HOA Assessment Lien and Foreclosure Notices prior to the HOA Sale.

31. The HOA Sale deprived Chase of its right to due process.

32. The HOA is estopped from claiming that the first Deed of Trust was extinguished by the HOA Sale.

33. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs and fees that are specifically enumerated in the statute.

34. A homeowners association may only collect as a part of the super-priority lien (a) nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b) nine months of common assessments which became due prior to the institution of an action to enforce the lien.

35. Upon information and belief, the HOA Assessment Lien and Foreclosure Notices included improper fees and costs in the amount demanded.

36. The attorney’s fees and costs of collecting on a homeowners association lien cannot be included in the super-priority lien amount.

37. Upon information and belief, the HOA Assessment Lien and Foreclosure Notices included fines, interest, late fees, dues, attorney’s fees, and costs of collection that are not properly included in a super-priority lien under Nevada law and that are not permissible under NRS 116.3102 *et seq.*

38. Upon information and belief, the unpaid principle balance under the Hawkins Loan and Deed of Trust is at least \$198,136.50.

39. SFR maintains that it has an interest in the Property.

III.

FIRST CAUSE OF ACTION

(Declaratory Relief)

1 40. Chase repeats and re-alleges the preceding paragraphs as fully set forth
2 herein and incorporates the same by reference.

3 41. Pursuant to NRS 40.010, this Court has the power and authority to
4 declare Chase's rights and interest in the Property.

5 42. The Deed of Trust is a first secured interest on the Property and is
6 superior to the interest, if any, acquired by SFR.

7 43. SFR claims an interest in the Property adverse to the interest of Chase
8 and Freddie Mac.

9 44. SFR did not comply with NRS Chapter 116, including, but not limited
10 to, providing notice of the HOA Sale to Chase. The HOA Sale is void and should be
11 rescinded on that basis.

12 45. The HOA Sale is void and should be rescinded on the basis that it did
13 not provide due process to Chase.

14 46. SFR's claim of free and clear title to the Property is barred by 12 U.S.C.
15 § 4617(j)(3), which precludes a homeowners association sale from extinguishing
16 Freddie Mac's interest in the Deed of Trust and preempts any state law to the
17 contrary.

18 47. The amount paid by SFR for the Property is grossly inadequate when
19 compared to the fair market value of the Property at the time of the HOA Sale.

20 48. For all the reasons set forth above in the General Allegations, Chase is
21 entitled to a declaration from this Court, pursuant to NRS 40.010, that a first
22 position Deed of Trust encumbered the Property and Chase's interest is superior to
23 the interest held by SFR, if any, and all other parties.

24 SECOND CAUSE OF ACTION

25 (Quiet Title)

26 49. Chase repeats and re-alleges the preceding paragraphs as though fully
27 set forth herein and incorporates the same by reference.

1 50. Pursuant NRS 40.010, this Court has the power and authority to declare
2 Chase's rights and interests in the Property.

3 51. The Deed of Trust is a first secured interest on the Property and is
4 superior to the interest, if any, acquired by SFR.

5 52. SFR claims an interest in the Property that is adverse to the interest of
6 Chase and Freddie Mac.

7 53. SFR did not comply with NRS Chapter 116, including, but not limited
8 to, providing notice of the HOA Sale.

9 54. SFR's claim of free and clear title to the Property is barred by 12 U.S.C.
10 § 4617(j)(3), which precludes a homeowners association sale from extinguishing
11 Freddie Mac's interest in the Deed of Trust and preempts any state law to the
12 contrary.

13 55. For all the reasons set forth above in the General Allegations, Chase is
14 entitled to a declaration from this Court, pursuant NRS 40.010, that a Deed of Trust
15 encumbered the Property and is superior to the interest held by SFR, if any, and all
16 other parties. Chase has furthermore been required to retain counsel and is entitled
17 to recover reasonable attorney's fees and costs.

18 THIRD CAUSE OF ACTION

19 (Unjust enrichment)

20 56. Chase repeats and re-alleges the preceding paragraphs as though fully
21 set forth herein and incorporate the same by reference.

22 57. The HOA Sale unjustly enriched SFR, in that it obtained real property
23 secured by the Deed of Trust with a grossly inadequate purchase price of \$3,700 to
24 the detriment of Chase, and contrary to fundamental principles of fairness, justice,
25 and fair dealing.

26 58. If it is determined that the Deed of Trust has been extinguished by the
27 HOA Sale, SFR has been unjustly enriched, in that Chase (as servicer) has continued
28 to expend funds and resources to maintain and preserve the Property, including but

1 not limited to funds for taxes and insurance to the detriment of Chase, and contrary
2 to fundamental principles of fairness, justice, and fair dealing.

3 59. Chase is entitled to recoup the reasonable amount of benefits obtained
4 by SFR based on the theory of unjust enrichment.

5 60. Chase has furthermore been required to retain counsel and is entitled to
6 recover reasonable attorney's fees and costs.

7 IV.

8 PRAYER

9 Wherefore, Chase prays for judgment against SFR, as follows:

- 10 1. For a declaration and determination that the first position Deed of Trust
11 was not extinguished by the HOA sale.
- 12 2. For a declaration and determination that the HOA sale did not convey
13 the Property free and clear to SFR;
- 14 3. For a declaration and determination that Chase's interest is superior to
15 the interest of SFR;
- 16 4. For a preliminary and permanent injunction that SFR, its successors,
17 assigns, and agents are prohibited from conducting any sale, transfer or
18 encumbrance of the Property;
- 19 5. For a preliminary injunction that SFR, its successors and assigns, be
20 required to pay all taxes, insurance and homeowners association dues
21 during the pendency of this action;
- 22 6. For a preliminary and permanent injunction that SFR, its successors
23 and assigns, pay all taxes, insurance and homeowners association dues
24 during the pendency of this action;
- 25 7. If it is determined that the Deed of Trust has been extinguished by the
26 HOA sale, for special damages in the amount of the fair market value of
27 the Property or the unpaid balance of the Loan and Deed of Trust, at the
28 time of the HOA sale, whichever is greater;

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8. For all fees and costs of court incurred herein, including post-judgment costs; and

9. For any and all further relief deemed appropriate by this Court.

DATED this _____ day of _____, 2016.

BALLARD SPAHR LLP

By: _____
Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

Attorneys for Plaintiff and Counter-Defendant JPMorgan Chase Bank N.A.

CERTIFICATE OF MAILING

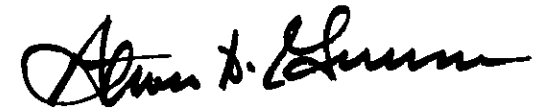
I HEREBY CERTIFY that on the ____ day of ____, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Amended Complaint, was served to the following parties in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

An employee of BALLARD SPAHR LLP

TAB 9



CLERK OF THE COURT

1 **ORDR**
Abran E. Vigil
2 Nevada Bar No. 7548
Russell J. Burke
3 Nevada Bar No. 12710
Holly Ann Priest
4 Nevada Bar No. 13226
BALLARD SPAHR LLP
5 100 North City Parkway, Suite 1750
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6 Telephone: (702) 471-7000
Facsimile: (702) 471-7070
7 E-Mail: vigila@ballardspahr.com
E-Mail: burker@ballardspahr.com
8 E-Mail: priesth@ballardspahr.com

9 *Attorneys for Plaintiff and Counter-Defendant*
JPMorgan Chase Bank N.A.

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **JPMORGAN CHASE BANK, NATIONAL**
13 **ASSOCIATION, a national association,**

14 **Plaintiff,**

15 **vs.**

16 **SFR INVESTMENTS POOL 1, LLC, a**
17 **Nevada limited liability company; DOES 1**
18 **through 10, ROE BUSINESS ENTITIES 1**
19 **through 10, inclusive,**

20 **Defendants.**

21 **SFR INVESTMENTS POOL 1, LLC a**
22 **Nevada limited liability company,**

23 **Counter-Claimant,**

24 **vs.**

25 **JPMORGAN CHASE BANK NATIONAL**
26 **ASSOCIATION, a national association;**
27 **ROBERT M. HAWKINS, an individual;**
28 **CHRISTINE V. HAWKINS, an individual;**
DOES 1-10 and ROE BUSINESS
ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross-
Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-9800 FAX (702) 471-7870

ORDER GRANTING MOTION FOR LEAVE TO AMEND THE COMPLAINT

This matter came before the Court on the unopposed Motion For leave to Amend the Complaint filed by Plaintiff JPMorgan Chase Bank N.A. ("Chase") in Department 24 of the Eighth Judicial District Court of Clark County, Nevada. SFR Investment Pool 1, LLC ("Defendant") was duly served with the Motion, Defendant failed to file a written opposition, which pursuant to EDCR 2.20(c) serves as independent grounds to grant the Motion.

Having reviewed the Motion, the memorandum of points and authorities and good cause appearing therefrom,

IT IS HEREBY ORDERED that Chase's Motion for Leave to Amend the Complaint is GRANTED.

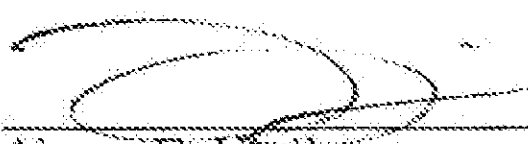
IT IS FURTHER ORDERED Chase may file the Amended Complaint, which was attached as Exhibit 1 to the Motion for Leave to Amend Complaint, within 10 days of the Notice Entry of this order.

IT IS SO ORDERED.

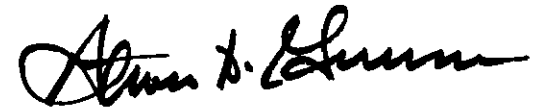

District Court Judge
Dated: 3/8/16

Respectfully Submitted:

BALLARD SPAHR LLP

By: 
Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
*Attorneys for Plaintiff and
Counter-Defendant JPMorgan Chase Bank, N.A.*

TAB 10



CLERK OF THE COURT

1 ACOM
Abran E. Vigil
2 Nevada Bar No. 7548
Russell J. Burke
3 Nevada Bar No. 12710
Holly Ann Priest
4 Nevada Bar No. 13226
BALLARD SPAHR LLP
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6 Telephone: (702) 471-7000
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E-Mail: burker@ballardspahr.com
8 E-Mail: priesth@ballardspahr.com

9 *Attorneys for Plaintiff and Counter-Defendant*
10 *JPMorgan Chase Bank N.A.*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 JPMORGAN CHASE BANK, NATIONAL)
12 ASSOCIATION, a national association,)

CASE NO. A-13-692304-C

13 Plaintiff,

DEPT NO. XXIV

14 vs.

15 SFR INVESTMENTS POOL 1, LLC, a)
16 Nevada limited liability company)

Defendants.

17 SFR INVESTMENTS POOL 1, LLC a)
18 Nevada limited liability company,)

19 Counter-Claimant,

20 vs.

21 JPMORGAN CHASE BANK NATIONAL)
ASSOCIATION, a national association;)
22 ROBERT M. HAWKINS, an individual;)
CHRISTINE V. HAWKINS, an individual;)
23 DOES 1-10 and ROE BUSINESS)
ENTITIES 1 through 10, inclusive,)

24 Counter-Defendant/Cross-)
25 Defendants.)
26)
27)
28)

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

1 AMENDED COMPLAINT

2 Plaintiff JPMorgan Chase Bank, N.A. ("Chase"), by and through its counsel of
3 record, hereby complain against Defendant SFR Investments Pool 1, LLC ("SFR") in
4 this Amended Complaint as follows:

5 I.

6 PARTIES, JURISDICTION AND VENUE

7 1. Chase is a national banking association headquartered in Ohio and
8 doing business in Clark County.

9 2. Upon information and belief, SFR is a Nevada limited liability company
10 whose principal place of business in Nevada.

11 3. The real property that is the subject matter of this action is situated in
12 Clark County, Nevada.

13 4. This Court has personal jurisdiction over SFR because SFR is a Nevada
14 limited liability company and because this lawsuit arises out of and is connected with
15 SFR's purposeful purchase of an interest in real property situated in Clark County,
16 Nevada.

17 5. Venue is proper with this district pursuant to NRS 13.010 because the
18 property at issue in this action is located in Clark County.

19 6. Venue is also proper in this district pursuant to NRS 13.040 because
20 SFR resides in this district.

21 II.

22 GENERAL ALLEGATIONS

23 *The Property and the Deed of Trust*

24 7. This action related to the parties' rights in that certain real property
25 commonly described as 3263 Morning Springs Dr., Henderson, Nevada, 89074; APN
26 177-24-514-043 (the "Property"). The Property is legally described as:
27 Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE
28 CANYON, as shown by map thereof on file in Book 53 of
Plats, Page 45, in the Office of the County Recorded of
Clark County, Nevada.

11. On or about June 12, 2006, upon information and belief, the Property was conveyed from Nathan Van Noy to Robert and Christine Hawkins (the "Borrowers").

12. On or about June 12, 2006, a Deed of Trust (the "Deed of Trust") securing a loan in the amount of \$240,000 (the "Hawkins Loan") was recorded as Book and Instrument Number 20060612-0003526 in the Official Records of the Clark County Recorder, showing: the Borrowers as borrowers; GreenPoint Mortgage Funding, Inc. as lender; Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary as nominee for Lender and Lender's successor and assigns; and Marin Conveyancing Corp. as trustee.

13. On or about June 20, 2006, Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased the Hawkins Loan, and thereby acquired ownership of both the note and Deed of Trust. Chase became Freddie Mac's servicer for the Hawkins Loan.

a. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, was governed by Freddie Mac's Single-Family Seller/Servicer Guide (the "Guide"). The Guide serves as a central governing document for Freddie Mac's relationship with servicers nationwide. See Guide at 1.2(a), www.freddiemac.com/singlefamily/guide.

b. The Guide provides that:
For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that *Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac.*

Guide at 6.6 (emphasis added), www.freddiemac.com/singlefamily/guide.

c. The Guide also provides that:
The Seller/Servicer is not required to prepare an assignment of the Security

1 Instrument to the Federal Home Loan Mortgage Corporation (Freddie Mac).
2 However, *Freddie Mac may, at its sole discretion and at any time, require a*
3 *Seller/Servicer, at the Seller/Servicer's expense, to prepare execute and/or record*
4 *assignments of the Security Instrument to Freddie Mac.*

5 Guide at 22.14 (emphasis added), www.freddiemac.com/singlefamily/guide.

6 14. On or about July 1, 2009, the Borrowers defaulted under the Hawkins
7 Loan and Deed of Trust.

8 15. On or about October 27, 2009, an Assignment of Deed of Trust was
9 recorded as Book and Instrument Number 20091027-0000618 in the Official Records
10 of the Clark County Recorder whereby MERS assigned the Deed of Trust to Chase.

11 ***The HOA Foreclosure and SFR's Purported Acquisition of the Property***

12 16. Upon information and belief, the Property is subject to a Declaration of
13 Covenants, Conditions, and Restrictions (the "CC&Rs") for Pebble Canyon
14 Homeowners Association ("HOA"). The CC&Rs were recorded in the Official Records
15 of the Clark County Recorder on or about November 8, 1991, as Book and Instrument
16 Number 911108-01962.

17 17. Upon information and belief, Nevada Association Services, Inc. ("NAS")
18 is the agent of the HOA and acted as the foreclosure trustee and/or agent, which
19 allegedly mailed and served the foreclosure notices, if any.

20 18. On or about August 3, 2012, a Notice of Delinquent Assessment Lien
21 was recorded by NAS as Book and Instrument Number 20120803-0002972 in the
22 Official Records of the Clark County Recorder. The Notice of Delinquent Assessment
23 Lien states that the "[t]otal amount due as of today's date is \$1,333.00. This amount
24 includes late fees, collection fees and interest in the amount of \$982.00."

25 19. On or about September 20, 2012, a Notice of Default and Election to Sell
26 Under Homeowners Association Lien was recorded by NAS as Book and Instrument
27 Number 20120920-0001446 in the Official Records of the Clark County Recorder.
28 The Notice of Default and Election to Sell Under Homeowners Association Lien

1 states in part that the allegedly past due "amount is \$2,126.00 as of September 15,
2 2012."

3 20. On or about February 7, 2013, NAS recorded a Notice of Foreclosure
4 Sale as Book and Instrument Number 20130207-0000892 in the Official Records of
5 the Clark County Recorder. The Notice of Sale states that the "[t]otal amount of the
6 unpaid balance of the obligation secured by the property to be sold and reasonable
7 estimated costs, expenses and advances at the time of the initial publication of the
8 Notice of Sale is \$3,142.43."

9 21. On or about March 1, 2013, NAS conducted a foreclosure sale of the
10 Property ("HOA Sale").

11 22. Upon information and belief, SFR bid \$3,700 for the Property at the
12 foreclosure sale.

13 23. Upon information and belief, at the time of the HOA Sale, the fair
14 market value of the Property was approximately \$123,000.

15 24. The amount that SFR paid for the Property was grossly inadequate
16 when compared to the fair market value of the Property at the time of the HOA Sale.

17 24. On or about March 6, 2013, NAS recorded a Foreclosure Deed on the
18 Property as Book and Instrument Number 20130306-0001648 in the Official Records
19 of the Clark County Recorder.

20 26. After the date of the HOA Sale and recordation of the Foreclosure Deed,
21 Chase continued to advance property preservation payments, including but not
22 limited to payment of taxes and homeowners' insurance.

23 27. Neither the Notice of Delinquent Assessment Lien, Notice of Default
24 and Election to Sell Under Homeowners Association Lien, or the Notice of Sale
25 (collectively, the "HOA Assessment Lien and Foreclosure Notices") provided any
26 notice of a right to cure by Plaintiff.

27 28. None of the HOA Assessment Lien and Foreclosure Notices specified
28 what portion, if any, that the HOA claimed constituted a "super-priority."

1 29. None of the HOA Assessment Lien and Foreclosure Notices specified
2 whether the HOA was foreclosing on the "super-priority" portion of its lien, if any, or
3 under the sub-priority lien.

4 30. Upon information and belief, Chase did not receive notice of all of the
5 HOA Assessment Lien and Foreclosure Notices prior to the HOA Sale.

6 31. The HOA Sale deprived Chase of its right to due process.

7 32. The HOA is estopped from claiming that the first Deed of Trust was
8 extinguished by the HOA Sale.

9 33. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include
10 costs and fees that are specifically enumerated in the statute.

11 34. A homeowners association may only collect as a part of the super-
12 priority lien (a) nuisance abatement charges incurred by the association pursuant to
13 NRS 116.310312 and (b) nine months of common assessments which became due
14 prior to the institution of an action to enforce the lien.

15 35. Upon information and belief, the HOA Assessment Lien and Foreclosure
16 Notices included improper fees and costs in the amount demanded.

17 36. The attorney's fees and costs of collecting on a homeowners association
18 lien cannot be included in the super-priority lien amount.

19 37. Upon information and belief, the HOA Assessment Lien and Foreclosure
20 Notices included fines, interest, late fees, dues, attorney's fees, and costs of collection
21 that are not properly included in a super-priority lien under Nevada law and that are
22 not permissible under NRS 116.3102 *et seq.*

23 38. Upon information and belief, the unpaid principle balance under the
24 Hawkins Loan and Deed of Trust is at least \$198,136.50.

25 39. SFR maintains that it has an interest in the Property.
26
27
28

III.

FIRST CAUSE OF ACTION

(Declaratory Relief)

40. Chase repeats and re-alleges the preceding paragraphs as fully set forth herein and incorporates the same by reference.

41. Pursuant to NRS 40.010, this Court has the power and authority to declare Chase's rights and interest in the Property.

42. The Deed of Trust is a first secured interest on the Property and is superior to the interest, if any, acquired by SFR.

43. SFR claims an interest in the Property adverse to the interest of Chase and Freddie Mac.

44. SFR did not comply with NRS Chapter 116, including, but not limited to, providing notice of the HOA Sale to Chase. The HOA Sale is void and should be rescinded on that basis.

45. The HOA Sale is void and should be rescinded on the basis that it did not provide due process to Chase.

46. SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes a homeowners association sale from extinguishing Freddie Mac's interest in the Deed of Trust and preempts any state law to the contrary.

47. The amount paid by SFR for the Property is grossly inadequate when compared to the fair market value of the Property at the time of the HOA Sale.

48. For all the reasons set forth above in the General Allegations, Chase is entitled to a declaration from this Court, pursuant to NRS 40.010, that a first position Deed of Trust encumbered the Property and Chase's interest is superior to the interest held by SFR, if any, and all other parties.

SECOND CAUSE OF ACTION

(Quiet Title)

49. Chase repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

50. Pursuant NRS 40.010, this Court has the power and authority to declare Chase's rights and interests in the Property.

51. The Deed of Trust is a first secured interest on the Property and is superior to the interest, if any, acquired by SFR.

52. SFR claims an interest in the Property that is adverse to the interest of Chase and Freddie Mac.

53. SFR did not comply with NRS Chapter 116, including, but not limited to, providing notice of the HOA Sale.

54. SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes a homeowners association sale from extinguishing Freddie Mac's interest in the Deed of Trust and preempts any state law to the contrary.

55. For all the reasons set forth above in the General Allegations, Chase is entitled to a declaration from this Court, pursuant NRS 40.010, that a Deed of Trust encumbered the Property and is superior to the interest held by SFR, if any, and all other parties. Chase has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees and costs.

THIRD CAUSE OF ACTION

(Unjust enrichment)

56. Chase repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporate the same by reference.

57. The HOA Sale unjustly enriched SFR, in that it obtained real property secured by the Deed of Trust with a grossly inadequate purchase price of \$3,700 to

1 the detriment of Chase, and contrary to fundamental principles of fairness, justice,
2 and fair dealing.

3 58. If it is determined that the Deed of Trust has been extinguished by the
4 HOA Sale, SFR has been unjustly enriched, in that Chase (as servicer) has continued
5 to expend funds and resources to maintain and preserve the Property, including but
6 not limited to funds for taxes and insurance to the detriment of Chase, and contrary
7 to fundamental principles of fairness, justice, and fair dealing.

8 59. Chase is entitled to recoup the reasonable amount of benefits obtained
9 by SFR based on the theory of unjust enrichment.

10 60. Chase has furthermore been required to retain counsel and is entitled to
11 recover reasonable attorney's fees and costs.

12 IV.

13 PRAYER

14 Wherefore, Chase prays for judgment against SFR, as follows:

- 15 1. For a declaration and determination that the first position Deed of Trust
16 was not extinguished by the HOA sale.
- 17 2. For a declaration and determination that the HOA sale did not convey
18 the Property free and clear to SFR;
- 19 3. For a declaration and determination that Chase's interest is superior to
20 the interest of SFR;
- 21 4. For a preliminary and permanent injunction that SFR, its successors,
22 assigns, and agents are prohibited from conducting any sale, transfer or
23 encumbrance of the Property;
- 24 5. For a preliminary injunction that SFR, its successors and assigns, be
25 required to pay all taxes, insurance and homeowners association dues
26 during the pendency of this action;
- 27 6. For a preliminary and permanent injunction that SFR, its successors
28 and assigns, pay all taxes, insurance and homeowners association dues

during the pendency of this action;

7. If it is determined that the Deed of Trust has been extinguished by the HOA sale, for special damages in the amount of the fair market value of the Property or the unpaid balance of the Loan and Deed of Trust, at the time of the HOA sale, whichever is greater;

8. For all fees and costs of court incurred herein, including post-judgment costs; and

9. For any and all further relief deemed appropriate by this Court.

DATED this 8 day of March, 2016.

BALLARD SPAHR LLP

By: 

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

Attorneys for Plaintiff and Counter-Defendant JPMorgan Chase Bank N.A.

CERTIFICATE OF MAILING

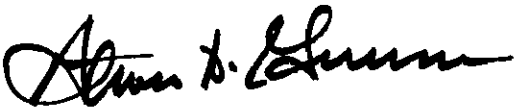
I HEREBY CERTIFY that on the 9th day of March, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Amended Complaint, was served to the following parties in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


An employee of BALLARD SPAHR LLP

TAB 11


CLERK OF THE COURT

ANAC
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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10; and ROE BUSINESS ENTITIES
1 through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Counter-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1 10 and ROE BUSINESS ENTITIES
1 through 10 inclusive,

Counter-Defendant/Cross-Defendants

Case No. A-13-692304-C

Dept. No. XXIV

**SFR INVESTMENTS POOL 1, LLC'S
ANSWER TO AMENDED COMPLAINT**

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR" or "Defendant"), hereby files an
answer to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase") Amended
Complaint as follows:

I. PARTIES, JURISDICTION, AND VENUE

1
2 1. Upon information and belief, SFR admits the factual allegations contained in paragraph
3 1 of the Amended Complaint.

4 2. Answering paragraph 2 of the Amended Complaint, SFR admits that it is a limited
5 liability company organized under the laws of the State of Nevada and that its principal place of
6 business is in Nevada.

7 3. Answering paragraph 3 of the Amended Complaint, SFR admits that the subject matter
8 of Chase's Amended Complaint is real property situated in Clark County, Nevada.

9 4. The allegations in paragraphs 4, 5, and 6 concerning jurisdiction and venue call for a
10 legal conclusion to which no response is required.

II. GENERAL ALLEGATIONS

11
12 5. Answering paragraph 7 of the Amended Complaint, SFR admits that the subject matter of
13 Chase's Amended Complaint is real property situated in Clark County, Nevada, commonly
14 known as **3263 Morning Springs Drive, Henderson, NV 89074, APN 177-24-514-043**; and
15 legally described as: "Lot Fifty (50) in Block Ten (10) of SEASONS AT PEBBLE CANYON, as
16 shown by map thereof on file in Book 53 of Plats, Page 45, in the Office of the County Recorder
17 of Clark County, Nevada."

18 6. In answering paragraph 11 [sic], upon information and belief, SFR admits that on or
19 about June 12, 2006, Nathan VanNoy conveyed the Property to Robert and Christine Hawkins
20 ("the Hawkines") via a Grant, Bargain, Sale Deed.

21 7. The recorded Deed of Trust referenced in paragraph 12 of the amended Complaint
22 speaks for itself, and SFR denies any allegations inconsistent with said document. To the extent
23 paragraph 12 alleges that the Hawkines were the title owners of record of the Property at times
24 prior to the Association foreclosure sale, SFR, upon information and belief, admits the
25 allegations in paragraph 12.

26 8. SFR is without sufficient knowledge or information to form a belief as to the truth of the
27 factual allegation concerning Freddie Mac's acquiring ownership of the note and deed of trust
28

1 contained in paragraph 13 of the Amended Complaint, and therefore denies said allegations.
2 The Freddy Mac "Guide" referenced in paragraph 13 speaks for itself, and SFR denies any
3 allegations inconsistent with said document.

4 9. SFR is without sufficient knowledge or information to form a belief as to the truth of the
5 factual allegations contained in paragraph 14 of the Amended Complaint, and therefore denies
6 said allegations.

7 10. The recorded Assignment of Deed of Trust referenced in paragraph 15 of the Amended
8 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

9 **The HOA Foreclosure and SFR's Purported Acquisition of the Property**

10 11. The recorded CC&Rs document referenced in paragraph 16 of the Complaint speaks for
11 itself, and SFR denies any allegations inconsistent with said document.

12 12. The allegations contained in paragraph 17 of the Amended Complaint call for a legal
13 conclusion, therefore, no answer is required. To the extent an answer is required, upon
14 information and belief, SFR admits the factual allegations contained in paragraph 17 of the
15 Amended Complaint.

16 13. The recorded Notice of Delinquent Assessment Lien referenced in paragraph 18 of the
17 Amended Complaint speaks for itself, and SFR denies any allegations inconsistent with said
18 document.

19 14. The recorded Notice of Default and Election to Sell referenced in paragraph 19 of the
20 Amended Complaint speaks for itself, and SFR denies any allegations inconsistent with said
21 document.

22 15. The recorded Notice of Foreclosure Sale referenced in paragraph 20 of the Amended
23 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

24 16. SFR admits the factual allegations contained in paragraph 21 of the Amended
25 Complaint.

26 17. In answering paragraph 22, SFR admits a non-judicial publicly-held HOA foreclosure
27 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
28 purchased the Property for \$3,700.00.

1 18. The allegation in paragraph 23 of the Amended Complaint calls for a legal conclusion to
2 which no response is required. To the extent a response is required, SFR specifically denies the
3 fair market value of the Property at the time of the HOA sale on March 1, 2013 exceeded
4 \$123,000.00.

5 19. The allegations in paragraph 24 of the Amended Complaint calls for a legal conclusion
6 to which no response is required. To the extent a response is required, SFR denies the amount it
7 paid for the Property was grossly inadequate when compared to the fair market value of the
8 Property at the time of the HOA Sale on March 1, 2013.

9 20. The recorded Foreclosure Deed referenced in paragraph 24 [sic] of the Amended
10 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

11 21. The allegations in paragraph 26 [sic] of the Amended Complaint calls for a legal
12 conclusion to which no response is required. Further, SFR is without sufficient knowledge or
13 information to form a belief as to the truth of the factual allegations concerning “property
14 preservation payments” made by the Bank contained in paragraph 26 [sic] of the Amended
15 Complaint, and therefore denies said allegations.

16 22. The allegations in paragraphs 27, 28, and 29 of the Amended Complaint calls for a legal
17 conclusion to which no response is required.

18 23. The allegations in paragraph 30 of the Amended Complaint calls for a legal conclusion
19 to which no response is required. Further, SFR is without sufficient knowledge or information to
20 form a belief as to the truth of the factual allegations concerning “notices” Chase may or may
21 not have received prior to the HOA Sale, and therefore denies said allegations.

22 24. The allegations in paragraphs 31 and 32 of the Amended Complaint calls for a legal
23 conclusion to which no response is required.

24 25. The statutes referenced in paragraphs 33, 34, and 37 of the Amended Complaint speak
25 for themselves, and SFR denies any allegations inconsistent with said statutes.

26 26. The allegations in paragraphs 35 and 36 of the Amended Complaint calls for a legal
27 conclusion to which no response is required.

28 27. SFR is without sufficient knowledge or information to form a belief as to the truth of the

1 factual allegations contained in paragraph 38 of the Amended Complaint regarding the Bank's
2 interactions with the Hawkinses and the amount owed on their loan, and therefore denies said
3 allegations.

4 28. In answering paragraph 39, SFR admits a non-judicial publicly-held HOA foreclosure
5 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
6 purchased the Property for \$3,700.00. Further, SFR admits that it is the current title owner of
7 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
8 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
9 March 1, 2013.

10 **FIRST CAUSE OF ACTION**
11 **(Declaratory Relief)**

12 29. SFR repeats and realleges its answers to paragraphs 1 through 39 of the Amended
13 Complaint as though fully set forth herein.

14 30. The allegations in paragraph 41 of the Amended Complaint calls for a legal conclusion
15 to which no response is required.

16 31. The allegation in paragraph 42 of the Amended Complaint calls for a legal conclusion to
17 which no response is required. To the extent a response is required, SFR specifically denies the
18 Deed of Trust is a first secured interest on the Property. SFR specifically denies the Deed of
19 Trust is superior to SFR's ownership interest in the Property.

20 32. In answering paragraph 43, SFR admits a non-judicial publicly-held HOA foreclosure
21 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
22 purchased the Property for \$3,700.00. Further, SFR admits that it is the current title owner of
23 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
24 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
25 March 1, 2013.

26 33. The allegation in paragraph 44 of the Amended Complaint calls for a legal conclusion to
27 which no response is required. To the extent a response is required, SFR specifically denies it
28 did not comply with NRS Chapter 116. SFR specifically denies NRS Chapter 116 requires that

1 a bona fide purchaser at a non-judicial publicly-held HOA foreclosure auction sale provide
2 notice of an HOA Sale to a lender before offering a bid.

3 34. The allegations contained in paragraphs 45, 46, and 47 of the Amended Complaint call
4 for a legal conclusion, therefore, no answer is required.

5 35. The allegation in paragraph 48 of the Amended Complaint calls for a legal conclusion to
6 which no response is required. To the extent a response is required, SFR specifically denies a
7 first position deed of trust presently encumbers the Property. SFR specifically denies that Chase
8 presently has in interest in the Property superior to SFR's ownership interest.

9 **SECOND CAUSE OF ACTION**
10 **(Quiet Title)**

11 36. SFR repeats and realleges its answers to paragraphs 1 through 48 of the Amended
12 Complaint as though fully set forth herein.

13 37. The allegations in paragraph 50 of the Amended Complaint calls for a legal conclusion
14 to which no response is required.

15 38. The allegation in paragraph 51 of the Amended Complaint calls for a legal conclusion to
16 which no response is required. To the extent a response is required, SFR specifically denies the
17 Deed of Trust is a first secured interest on the Property. SFR specifically denies the Deed of
18 Trust is superior to SFR's ownership interest in the Property.

19 39. In answering paragraph 52, SFR admits a non-judicial publicly-held HOA foreclosure
20 auction sale occurred on March 1, 2013, at which time SFR was the highest bidder and
21 purchased the Property for \$3,700.00. Further, SFR admits that it is the current title owner of
22 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
23 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
24 March 1, 2013.

25 40. The allegation in paragraph 53 of the Amended Complaint calls for a legal conclusion to
26 which no response is required. To the extent a response is required, SFR specifically denies it
27 did not comply with NRS Chapter 116. SFR specifically denies NRS Chapter 116 requires that
28 a bona fide purchaser at a non-judicial publicly-held HOA foreclosure auction sale provide

1 notice of an HOA Sale to a lender before offering a bid.

2 41. The allegations contained in paragraph 54 of the Amended Complaint call for a legal
3 conclusion, therefore, no answer is required.

4 42. The allegation in paragraph 55 of the Amended Complaint calls for a legal conclusion to
5 which no response is required. To the extent a response is required, SFR specifically denies a
6 first position deed of trust presently encumbers the Property. SFR specifically denies that the
7 Bank presently has in interest in the Property superior to SFR's ownership interest. SFR denies
8 that the Bank has been required to retain counsel. SFR denies that the Bank is entitled to
9 recover reasonable attorney's fees and costs.

10 **THIRD CAUSE OF ACTION**
11 **(Unjust Enrichment)**

12 43. SFR repeats and realleges its answers to paragraphs 1 through 55 of the Amended
13 Complaint as though fully set forth herein.

14 44. The allegations in paragraph 57 of the Amended Complaint call for a legal conclusion to
15 which no response is required. To the extent a response is required, SFR specifically denies the
16 HOA Sale unjustly enriched SFR. SFR specifically denies the purchase price of \$3,700.00 was
17 grossly inadequate. SFR specifically denies the purchase price of \$3,700.00 was contrary to
18 fundamental principles of fairness, justice, and fair dealing.

19 45. The allegations contained in paragraphs 58 and 59 of the Amended Complaint call for a
20 legal conclusion, therefore, no answer is required.

21 46. SFR denies the allegations of paragraph 60.

22 **AFFIRMATIVE DEFENSES**

23 1. The Bank fails to state a claim upon which relief may be granted.

24 2. The Bank is not entitled to relief from or against SFR, as the Bank has not sustained any
25 loss, injury, or damage that resulted from any act, omission, or breach by SFR.

26 3. The occurrence referred to in the Complaint, and all injuries and damages, if any,
27 resulting therefrom, were caused by the acts or omissions of the Bank.

28 4. The occurrence referred to in the Complaint, and all injuries and damages, if any,

1 resulting therefrom, were caused by the acts or omissions of a third party or parties over whom
2 SFR had no control.

3 5. SFR did not breach any statutory or common law duties allegedly owed to the Bank.

4 6. The Bank's claims are barred because SFR complied with applicable statutes and with
5 the requirements and regulations of the State of Nevada.

6 7. The Bank's claims are barred because the Association and its agents complied with
7 applicable statutes and regulations.

8 8. The Bank's causes of action are barred in whole or in part by the applicable statutes of
9 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, ratification and
10 unclean hands.

11 9. The Bank is not entitled to equitable relief because it has an adequate remedy at law.

12 10. The Bank has no standing to enforce the first deed of trust and/or the underlying
13 promissory note.

14 11. The Bank has no standing to enforce the statutes and regulations identified in the Third-
15 Party Complaint.

16 12. Any purported assignment of the first deed of trust after the Association foreclosure sale
17 is invalid and unenforceable.

18 13. The first deed of trust and other subordinate interests in the Property were extinguished
19 by the Association foreclosure sale held in accordance with NRS Chapter 116.

20 14. The Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is
21 entitled to rely on the recitals contained in the Association foreclosure deed that the sale was
22 properly noticed and conducted.

23 15. The Bank has no remedy against SFR because SFR is a bona fide purchaser for value.

24 16. The Bank's Complaint and all claims for relief therein are barred for the Bank's failure
25 to serve proper notice to the Attorney General of the State of Nevada pursuant to NRS 30.130.

26 17. The Bank's Counterclaim and all claims for relief therein should be dismissed on the
27 ground that the Bank has failed to join necessary or indispensable parties pursuant to NRCP 19,
28 namely the HOA's Agents who recorded a Notice of Delinquent Assessment Lien against the

1 property and ultimately initiated foreclosure of said property.

2 18. The Bank's Unjust Enrichment claim is barred by the Voluntary Payment Doctrine
3 which precludes such a claim on the facts alleged here. Any payments made to an agent of the
4 Bank to inspect or otherwise "care" or "preserve" the property were voluntarily made and
5 without benefit to SFR. Additionally, in order to prevail on an unjust enrichment claim, the Bank
6 must show that SFR retained the money or property of the Bank against fundamental principles
7 of justice or equity and good conscience. Thus, under the Voluntary Payment Doctrine, SFR was
8 not "unjustly enriched" by those monies.

9 19. Pursuant to Nevada Rules of Civil Procedure 11, as amended, all possible affirmative
10 defenses may not have been alleged herein insofar as sufficient facts were not available after
11 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend
12 this Answer to assert any affirmative defenses if subsequent investigation warrants.

13 DATED this 23rd day of March, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
JACQUELINE A. GILBERT, ESQ.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S ANSWER TO AMENDED COMPLAINT**, to the following parties:

<u>Select All</u> <u>Select None</u>		
Ballard Spahr		
Name	Email	Select
Abran Vigil	vigila@ballardspahr.com	<input checked="" type="checkbox"/>
Holly Priest	priesth@ballardspahr.com	<input checked="" type="checkbox"/>
Mary Kay Carlton	carltonm@ballardspahr.com	<input checked="" type="checkbox"/>
Ballard Spahr Andrews & Ingersoll, LLP		
Name	Email	Select
Sarah Walton	waltons@ballardspahr.com	<input checked="" type="checkbox"/>
Ballard Spahr LLP		
Name	Email	Select
Catherine Wrangham-Rowe	wranghamrowec@ballardspahr.com	<input checked="" type="checkbox"/>
Las Vegas Docketing	lvdocket@ballardspahr.com	<input checked="" type="checkbox"/>
Lindsay Demaree	demareel@ballardspahr.com	<input checked="" type="checkbox"/>
Russell J. Burke	BurkeR@ballardspahr.com	<input checked="" type="checkbox"/>

/s/ Diana Cline Ebron
An Employee of Kim Gilbert Ebron

TAB 12

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL)
ASSOCIATION, a national)
association,)

Plaintiff,)

vs.) Case No.
A-13-692304-C

SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability)
company; DOES 1 through 10; and)
ROE BUSINESS ENTITIES 1 through)
10, inclusive,)

Defendants.)

) ...

DEPOSITION OF SUSAN LYN NEWBY

30(b)(6) FOR JPMORGAN CHASE BANK, N.A.

Taken at the Offices of Ballard Spahr LLC
100 North City Parkway, Suite 1750
Las Vegas, Nevada

On Thursday, April 21, 2016
At 3:35 p.m.

Reported by: Jane V. Efaw, CCR #601, RPR

1 SFR INVESTMENTS POOL 1, LLC, a) ...
Nevada limited liability)
2 company,)
3 Counter-Claimant,)
4 vs.)
5 JPMORGAN CHASE BANK, NATIONAL)
ASSOCIATION, a national)
6 association; ROBERT M. HAWKINS,)
an individual; CHRISTINE V)
7 HAWKINS, an individual; DOES 1)
10 and ROE BUSINESS ENTITIES 1)
8 through 10 inclusive,)
9 Counter-Defendant/)
Cross-Defendants.)
10)

11 Appearances:

12 For Plaintiff:

13 LINDSAY C. DEMAREE, ESQ.
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Suite 1750
15 Las Vegas, Nevada 89106-4617
(702) 471-7000
16

JERMAINE L. MCPHERSON, ESQ.
17 JPMorgan Chase & Co.
4 Chase Metrotech Center
18 Floor 18
Brooklyn, New York 11245
19 (718) 242-1758

20 For Defendant:

21 DIANA CLINE EBRON, ESQ.
Kim Gilbert Ebron
22 7625 Dean Martin Drive
Suite 110
23 Las Vegas, Nevada 89139
(702) 485-3300
24

25 * * * * *

1 **A. No.**

2 Q. Did you see any communication in the
3 servicing notes or in iVault with the borrower about
4 the association lien, assessments or foreclosure?

5 **A. No.**

6 Q. I guess I should say "borrowers" in this
7 case. Going back to Exhibit 2. Who was the
8 originating lender for this loan?

9 **A. GreenPoint Mortgage Funding, Inc.**

10 Q. When was it originated?

11 **A. In 2006.**

12 Q. Is Chase the servicer for this loan?

13 **A. Yes.**

14 Q. When did Chase become the servicer?

15 **A. September 2008.**

16 Q. Do you know who the servicer was before
17 September 2008?

18 **A. Washington Mutual.**

19 Q. And so did Chase become the servicer when it
20 acquired Washington Mutual through the FDIC?

21 **A. Yes.**

22 Q. Is Chase also the investor of this loan?

23 **A. No.**

24 Q. Who is the investor?

25 **A. Freddie Mac.**

1 Q. When did Freddie Mac become the investor?

2 A. September 2007.

3 Q. How do you know that?

4 A. I saw it in the MERS milestones and our
5 transfer in the LTH screen.

6 Q. Do you know how much Freddie Mac paid to
7 become the investor?

8 MS. DEMAREE: Object to the extent it calls
9 for speculation.

10 THE WITNESS: No.

11 BY MS. EBRON:

12 Q. Do you know if Washington Mutual was ever
13 the investor?

14 A. Not that I'm aware of.

15 Q. Who sold the loan to Freddie Mac?

16 A. Bank of America as trustee.

17 Q. What was Bank of America the trustee of?

18 MS. DEMAREE: Object to the extent it calls
19 for speculation and to the extent it calls for a
20 legal conclusion.

21 THE WITNESS: And I don't have an answer for
22 that.

23 BY MS. EBRON:

24 Q. How do you know it was Bank of America as
25 trustee?

1 **A. The MERS milestones indicated that Bank of**
2 **America was the trustee.**

3 Q. It just says Bank of America as trustee or
4 Bank of America trustee, or did it have additional
5 information that you just can't remember right now?

6 **A. No, I think it only said Bank of America as**
7 **trustee. I don't remember it saying anything else.**

8 Q. Did you see any documents contained in
9 iVault that had to do with the transfer of the loan
10 or the sale of the loan from Bank of America to
11 Freddie Mac?

12 **A. No.**

13 Q. Where would those documents be stored?

14 MS. DEMAREE: Object to the extent it calls
15 for speculation.

16 THE WITNESS: I don't know.

17 BY MS. EBRON:

18 Q. Do you know who input the information or
19 what department was responsible for inputting the
20 information into the MERS milestones where you saw
21 that Freddie Mac has an interest in this loan in
22 2007?

23 MS. DEMAREE: Objection. Calls for
24 speculation.

25 THE WITNESS: No.

1 BY MS. EBRON:

2 Q. Do you know who input the information or
3 what department was responsible for inputting the
4 information into -- I believe you said the LTH
5 screen?

6 MS. DEMAREE: Same objection.

7 THE WITNESS: No.

8 BY MS. EBRON:

9 Q. I apologize. I may have asked this already.
10 Do you know if there was any other servicer before
11 Washington Mutual?

12 A. Yes.

13 Q. Who was that?

14 A. GreenPoint Mortgage Funding, Inc.

15 Q. Do you know when GreenPoint stopped being
16 the servicer?

17 A. September 2007.

18 Q. And that was when Washington Mutual became
19 the servicer?

20 A. Yes.

21 Q. And then a year later it was Chase; right,
22 as the servicer?

23 A. Close to a year later, yes.

24 Q. Do you know when Bank of America became the
25 investor?

1 **A. In 2006.**

2 MS. DEMAREE: I'll object to the extent that
3 calls for speculation.

4 BY MS. EBRON:

5 Q. Was that information included in the MERS
6 milestones?

7 **A. Yes.**

8 Q. Did you see any indication in the file that
9 Chase notified Freddie Mac about this litigation?

10 MS. DEMAREE: Object to the extent it calls
11 for attorney/client privileged information.

12 THE WITNESS: No.

13 BY MS. EBRON:

14 Q. Did you see any information in the file that
15 suggested that Chase notified the FHFA about this
16 litigation?

17 MS. DEMAREE: Objection to the extent that
18 it calls for attorney/client privilege.

19 THE WITNESS: No.

20 BY MS. EBRON:

21 Q. Did Chase attain consent from Freddie Mac to
22 file this lawsuit?

23 MS. DEMAREE: Objection. Legal conclusion.

24 THE WITNESS: Not that I'm aware of.

25 ///

1 BY MS. EBRON:

2 Q. Did Chase obtain consent from the FHFA to
3 file this lawsuit?

4 MR. McPHERSON: Objection.

5 MS. DEMAREE: Objection. Calls for a legal
6 con.

7 THE WITNESS: Not that I'm aware of.

8 BY MS. EBRON:

9 Q. Are there any recorded documents that show
10 that Freddie Mac is the investor?

11 MS. DEMAREE: Object to the extent it falls
12 outside the depo notice.

13 THE WITNESS: Not that I'm aware of.

14 BY MS. EBRON:

15 Q. Looking in the Deed of Trust that's marked
16 as Exhibit 2. On the second page, it references in
17 paragraph F a Promissory Note. Do you see that?

18 **A. Where are you at?**

19 Q. It's the page that's Bates-stamped
20 Chase-Hawkins 0025, paragraph F.

21 **A. Okay. I'm there.**

22 Q. Do you see that it references a Promissory
23 Note dated June 7th, 2006?

24 **A. Yes.**

25 Q. Have you seen a copy of that Promissory

1 Note?

2 **A. Yes.**

3 Q. Have you seen the original wet-ink-signature
4 Promissory Note?

5 **A. No.**

6 Q. Do you know where it is?

7 **A. Monroe, Louisiana.**

8 Q. How do you know that?

9 **A. Because I've seen a chain of custody report.**

10 Q. Have you talked to anybody who's seen the
11 original wet-ink-signature Promissory Note?

12 **A. No.**

13 Q. Did you talk to anyone besides your
14 attorneys in preparation for your deposition outside
15 of the e-mails with Investor Relations?

16 **A. No.**

17 Q. How many endorsements are on the promissory
18 note as it exists today, if any?

19 **A. One, I believe.**

20 Q. Who is it from, and who is it to?

21 **A. I think it's from GreenPoint to Washington
22 Mutual.**

23 Q. Not to Freddie Mac?

24 **A. No.**

25 Q. And not to Bank of America?

1 **A. No.**

2 Q. Are there any allonges to the note?

3 **A. Yes.**

4 Q. Just one?

5 **A. One.**

6 Q. Are there any endorsements on the allonge?

7 **A. Not that I'm aware of.**

8 MS. DEMAREE: Just for clarification; are
9 you talking about like another endorsement stamp, or
10 are you talking about the content of the allonges?

11 BY MS. EBRON:

12 Q. Well, what is the content of the allonge?

13 **A. It's payable to JPMorgan Chase.**

14 Q. From?

15 **A. Washington Mutual, I believe.**

16 Q. Is Freddie Mac mentioned anywhere on the
17 note as far as in the endorsements or on the allonge?

18 **A. Not that I'm aware of.**

19 Q. Is there more than one allonge?

20 **A. Not that I'm aware of am.**

21 Q. When Chase became the servicer in September
22 of 2008, did it receive documents from Washington
23 Mutual?

24 **A. Yes.**

25 Q. And were those incorporated into Chase's

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CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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* * * * *

I, SUSAN LYN NEWBY, deponent herein, do
hereby certify and declare the within and foregoing
transcription to be my deposition in said action;
that I have read, corrected and do hereby affix my
signature to said deposition.

SUSAN LYN NEWBY, Deponent

TAB 13

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
Telephone: (702) 471-7000
Facsimile: (702) 471-7070
E-Mail: vigila@ballardspahr.com
E-Mail: burker@ballardspahr.com
E-Mail: priesth@ballardspahr.com

Attorneys for JP Morgan Chase Bank N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES 1
through 10, ROE BUSINESS ENTITIES 1
through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Counter-Claimant,

vs.

JP MORGAN CHASE BANK National
Association, a national association;
ROBERT M. HAWKINS, an individual;
CHRISTINE V. HAWKINS, an individual;
DOES 1-10 and ROE BUSINESS
ENTITIES 1 through 10, inclusive,

Counter-Defendant/Cross
Defendants.

CASE NO. A-13-692304-C

DEPT NO. XXIV

**JPMORGAN CHASE BANK N.A.'S FIRST SUPPLEMENT TO N.R.C.P 16.1
DISCLOSURES**

Plaintiff and Counter-Defendant JPMorgan Chase Bank, N.A. (“Chase”), through Ballard Spahr, LLP, its counsel of record, submits the following second supplement to its initial disclosures pursuant to N.R.C.P. 16.1. (**Bold text** indicates supplemented information.)

I. Individuals Likely to Have Discoverable Information

1. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR DEFENDANT SFR INVESTMENTS POOL 1, LLC (“SFR”)
c/o Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
(702) 485-3300**

Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the transaction that is the subject of this litigation; communications and relationships defendant SFR had with Nevada Association Services, Inc. (“NAS”), Pebble Canyon Homeowner Association (the “Association”), and borrowers Robert M. and Christine V. Hawkins; the consideration, if any, paid at the Association sale that is the subject of this litigation; and any other matters related to the claims and defenses in this case.

2. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR CHASE
1111 Polaris Parkway
Columbus, Ohio 43240
Do not contact witness except through undersigned counsel**

Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding Chase’s involvement with the subject property; notices related to the subject property; communications with defendant, NAS, the borrowers, and/or the Association, if any; and any other matters related to the claims and defenses in this case.

3. **ROBERT M. HAWKINS
3263 Morning Springs Drive
Henderson, Nevada 89074**

Chase anticipates that Mr. Hawkins will testify regarding his involvement with the subject property; notices related to the subject property; communications

1 with SFR, NAS, Chase, the Association sale purchaser, and/or the Association, if any;
2 and any other matters related to the claims and defenses in this case

3 4. CHRISTINE V. HAWKINS
3263 Morning Springs Drive
4 Henderson, Nevada 89074

5 Chase anticipates that Ms. Hawkins will testify regarding her involvement
6 with the subject property; notices related to the subject property; communications
7 with SFR, NAS, Chase, the Association sale purchaser, and/or the Association, if any;
8 and any other matters related to the claims and defenses in this case.

9 5. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR PEBBLE CANYON HOMEOWNERS ASSOCIATION
10 c/o Taylor Association Management
259 N. Pecos Road, Suite 100
11 Henderson, Nevada 89074

12 Chase anticipates that the Rule 30(b)(6) Designee and the Custodian of
13 Records will testify regarding the Association's involvement with the subject
14 property; the Association's declarations of covenants, conditions and restrictions,
15 bylaws, rules, procedures, policies, patterns, and practices, and understandings
16 related to NRS Chapter 116.3116 et seq. (including, without limitation, the
17 statute's notice and sale provisions); the Association's schedule of assessments,
18 collections, and ledgers related to the subject property; notices related to the
19 subject property; communications and relationships with the subject property's
20 owner and/or residents, SFR, NAS, the Association sale purchaser, and Chase; the
21 basis for the purported Association lien under which the subject property was
22 offered for sale; the basis for purporting to extinguish the first deed of trust; the
23 Association's and/or Board of Directors for the Association's compliance, if any,
24 with the Association's governing documents and Nevada law; and any other
25 matters related to the claims and defenses in this case.

26 6. RULE 30(b)(6) DESIGNEE AND/OR CUSTODIAN OF RECORDS
FOR NAS
27 6244 West Desert Inn Road, Suite A
Las Vegas, Nevada 89146
28 (702) 804-8885

Chase anticipates that the Rule 30(b)(6) Designee and Custodian of Records, will testify regarding NAS's and the Association's involvement with the subject property; notices related to subject property; the Association sale for the subject property; the Association's declarations of covenants, conditions and restrictions, bylaws, rules, procedures, policies, patterns, and NAS's practices, and understandings related to NRS Chapter 116.3116 et seq. (including, without limitation, the statute's notice and sale provisions); communications and relationships with the subject property's owner and/or residents, SFR, the Association, the Association sale purchaser, and Chase; the declaration of default by the Association, if any; the basis for the purported Association lien under which the subject property was offered for sale; the alleged Association foreclosure sale; the basis for purporting to extinguish the first deed of trust; and any other matters related to the claims and defenses in this case.

7. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
("MERS")
PO BOX 2026
Flint, Michigan 48501**

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the assignment of the deed of trust from MERS to Chase and Association foreclosure notices, if any, sent to MERS.

8. **THE AUCTIONEER AND SALE COORDINATOR FOR THE
ASSOCIATION FORECLOSURE SALE
c/o NAS
9500 W. Flamingo Road #101
Las Vegas, Nevada 89147**

It is anticipated that the Association Foreclosure Sale auctioneer and sale coordinator will testify regarding the facts and circumstances of the Association Foreclosure Sale, including, without limitation, any announcements made regarding the Association's lien, the bidding that occurred at the sale, the sale participants, and the purchase price tendered at the sale.

9. **RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS**

FOR CLARK COUNTY ASSESSOR
Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the records produced by the Clark County Assessor, the Assessor's valuation methods, and the property's value.

10. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR CLARK COUNTY RECORDER
Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the records produced by the Clark County Assessor and recorded documents pertaining to the property.

11. RULE 30(b)(6) DESIGNEE AND CUSTODIAN OF RECORDS
FOR NEVADA STATE TREASURER
555 E. Washington Ave.
Suite 4600
Las Vegas, Nevada 89101

It is anticipated that the Rule 30(b)(6) Designee and Custodian of Records will testify regarding the tax records and payments for the property.

Defendant incorporates all persons disclosed by all other parties and all persons identified in any disclosed document.

12. CORPORATE REPRESENTATIVE OF FEDERAL HOME LOAN
MORTGAGE CORPORATION ("FREDDIE MAC")
c/o Russell J. Burke
Ballard Spahr LLP
100 N. City Parkway, Suite 1750
Las Vegas, Nevada 89106

It is anticipated that the Corporate Representative of Freddie Mac will testify regarding its ownership interest in the Deed of Trust and loan.

II. List of Documents¹

	Document	Bates No.
1.	Appraisal Report, dated 02.13.11	Chase-Hawkin0001-0010
2.	Foreclosure Deed, recorded 03.06.13	Chase-Hawkins0011-0013
3.	Association Notice of Default, recorded 09.20.12	Chase-Hawkins0014-0015
4.	HOA Notice of Foreclosure, signed 02.01.13	Chase-Hawkins0016
5.	Assignment of Deed of Trust, recorded 10.27.09	Chase-Hawkins0017-0018
6.	Grant, Bargain and Sale Deed, recorded 06.12.06	Chase-Hawkins0019-0021
7.	Chase Notice of Default, recorded 10.27.09	Chase-Hawkins0022-0023
8.	Deed of Trust, recorded 06.12.06	Chase-Hawkins0024-0044
9.	Substitution of Trustee, recorded 10.27.09	Chase-Hawkins0045-0046
10.	Escrow Activity	Chase-Hawkins0047-50
11.	Corporate Advance Activity	Chase-Hawkins0051-56
12.	FHFA Statement of December 22, 2014	Chase-Hawkins0057-59
13.	FHFA Statement of April 21, 2015	Chase-Hawkins0060
14.	FHFA Statement of August 28, 2015	Chase-Hawkins0061
15.	Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Pebble Canyon Homeowners Association, recorded February 08, 1991	Chase-Hawkins0062-94
16.	Foreclosure Addendum To Residential Lease Agreement	Chase-Hawkins0095
17.	Notice of Default and Election to Sell Under Homeowners Association Lien	Chase-Hawkins0096
18.	Notice of Foreclosure Sale by Pebble Canyon HOA	Chase-Hawkins0100-101
19.	Notice of Default and Election to Sell Under Deed of Trust	Chase-Hawkins0102-103
20.	Loan Policy of Title Insurance	Chase-Hawkins0104-117

¹ Documents may include redactions of sensitive borrower information and/or financial account numbers. Chase will disclose unredacted versions of these documents, if necessary, only after a protective order is entered in the case.

21.	Trustee's Sale Guarantee, dated March 6, 2012	Chase-Hawkins0118-128
22.	Note	Chase-Hawkins 0129-132
23.	Profile Inquiry	Chase-Hawkins0133-0134
24.	Loan Status Manager	Chase-Hawkins0135
25.	Documents verifying Chase's status as servicer	To be supplemented ²
26.	Documents produced by National Association Services, Inc. pursuant to a subpoena duces tecum	HawkinsNAS00001-209
27.	Documents produced by HOA pursuant to a subpoena duces tecum	Chase-Hawkins_PebbleCreekHOA0001-0409
28.	Documents produced by Clark County Assessor pursuant to a subpoena duces tecum	Chase-Hawkins_TaxAssessor0001-0029

Documents may include redactions of the sensitive borrower and/or financial account numbers. Chase will disclose unredacted versions of these documents, if necessary, after a protective order is entered in this case. Chase does not waive any privilege or protection claim, including, without limitation, attorney-client privilege and work-product claims.

III. Computation of Any Category of Damages

In addition to the equitable relief sought in Chase's complaint, Chase seeks damages including, without limitation, reimbursement for all funds and resources Chase expended to preserve and/or maintain the property, including, without limitation, the following:

<i>Date</i>	<i>Amount</i>	<i>Item</i>
09/17/14	\$301.61	County Tax
07/29/14	\$302.37	County Tax
03/24/14	\$1,744.00	Homeowners Insurance
02/18/14	\$292.83	County Tax
12/17/13	\$292.83	County Tax
09/09/13	\$292.83	County Tax

² Documents will be supplemented once a protective order is agreed upon and filed.

07/25/13	\$546.31	County Tax
05/04/13	\$80.00	Yard Maintenance
04/09/13	\$80.00	Yard Maintenance
03/22/13	\$80.00	Yard Maintenance
TOTAL	\$4,012.78	

IV. Insurance Agreements

At this time, Chase is unaware of insurance coverage to satisfy a potential judgment in this case.

V. Reservations

Discovery is ongoing. Chase reserves: (a) its right to supplement any information in this disclosure; (b) all objections to the admissibility of documents and/or witnesses disclosed by any party; and (c) its right to use as evidence any documents and/or witness testimony disclosed by any party or filed in this action.

DATED this 6th day of May, 2016.

BALLARD SPAHR LLP

By: /s/ Russell J. Burke

Abran E. Vigil
Nevada Bar No. 7548
Russell J. Burke
Nevada Bar No. 12710
Holly Ann Priest
Nevada Bar No. 13226
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of May, 2016, and pursuant to NRCP 5(b), a true and correct copy of the foregoing JPMORGAN CHASE BANK N.A.'S FIRST SUPPLEMENT TO N.R.C.P 16.1 DISCLOSURES, was served to the following parties in the manner set forth below:

Kim Gilbert Ebron
Howard C. Kim, Esq.
Diana S. Cline, Esq.
Jacqueline A. Gilbert, Esq.
7625 Dean Martin Drive
Suite 110
Las Vegas, NV 89139

Attorneys for SFR Investments Pool, LLC

☐ HAND DELIVERY

☐ E-MAIL TRANSMISSION

☐ U.S. MAIL, POSTAGE PREPAID

☐ Certified Mail, Receipt No. _____,
Return receipt requested

☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

/s/ Sarah H. Walton
An employee of BALLARD SPAHR LLP

Escrow Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: **Redacted**

Borrower Name: HAWKINS, ROBERT M

09/17/14 07/01/09 ESCROW ADVANCE

Redacted

Transaction Description:

ESCROW ADVANCE

Proc Date: 09/17/2014
Due Date: 07/2009
Tot Received: \$301.61+
Escrow Pd: \$301.61+
Tran Code: 161

09/17/14 09/01/14 COUNTY TAX

Redacted

Transaction Description:

COUNTY TAX

Disb Check No: WIRE
Proc Date: 09/17/2014
Due Date: 09/2014
Net Disbursed: \$301.61-
Escrow Payee: 27003
CLARK COUNTY
CLARK COUNTY - TREASURER
500 S GRAND CENTRAL PKWY
LAS VEGAS NV 89106
(702) 455-4323
Batch No: EGL
Tran Code: 312

07/29/14 07/01/09 ESCROW ADVANCE

Redacted

Transaction Description:

ESCROW ADVANCE

Proc Date: 07/29/2014
Due Date: 07/2009
Tot Received: \$302.37+
Escrow Pd: \$302.37+
Tran Code: 161

07/29/14 08/01/14 COUNTY TAX

Redacted

Transaction Description:

COUNTY TAX

Disb Check No: WIRE
Proc Date: 07/29/2014
Due Date: 08/2014
Net Disbursed: \$302.37-
Escrow Payee: 27003
CLARK COUNTY
CLARK COUNTY - TREASURER
500 S GRAND CENTRAL PKWY
LAS VEGAS NV 89106
(702) 455-4323
Batch No: EGL
Tran Code: 312

03/24/14 07/01/09 ESCROW ADVANCE

Redacted

Transaction Description:

ESCROW ADVANCE

Proc Date: 03/24/2014

Escrow Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: Redacted

Borrower Name: HAWKINS, ROBERT M

Due Date: 07/2009
Tot Received: \$1,744.00+
Escrow Pd: \$1,744.00+
Tran Code: 161

03/24/14 04/01/14 HOMEOWNERS INSURANCE

Redacted

Transaction Description:
HOMEOWNERS INSURANCE
Disb Check No: 387405
Proc Date: 03/24/2014
Due Date: 04/2014
Net Disbursed: \$1,744.00-
Escrow Payee: 6L574
FOREMOST INS CO
PO BOX C915
CAROL STREAM, IL 60132
(800) 532-4221
Batch No: 449
Tran Code: 351

02/18/14 07/01/09 ESCROW ADVANCE

Redacted

Transaction Description:
ESCROW ADVANCE
Proc Date: 02/18/2014
Due Date: 07/2009
Tot Received: \$292.83+
Escrow Pd: \$292.83+
Tran Code: 161

02/18/14 02/01/14 COUNTY TAX

Redacted

Transaction Description:
COUNTY TAX
Disb Check No: WIRE
Proc Date: 02/18/2014
Due Date: 02/2014
Net Disbursed: \$292.83-
Escrow Payee: 27003
CLARK COUNTY
CLARK COUNTY - TREASURER
500 S GRAND CENTRAL PKWY
LAS VEGAS NV 89106
(702) 455-4323
Batch No: EGL
Tran Code: 312

12/17/13 07/01/09 ESCROW ADVANCE

Redacted

Transaction Description:
ESCROW ADVANCE
Proc Date: 12/17/2013
Due Date: 07/2009
Tot Received: \$292.83+
Escrow Pd: \$292.83+
Tran Code: 161

Escrow Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: **Redacted**

Borrower Name: HAWKINS, ROBERT M

12/17/13 12/01/13 COUNTY TAX

Redacted

Transaction Description:

COUNTY TAX

Disb Check No: WIRE

Proc Date: 12/17/2013

Due Date: 12/2013

Net Disbursed: \$292.83-

Escrow Payee: 27003

CLARK COUNTY

CLARK COUNTY - TREASURER

500 S GRAND CENTRAL PKWY

LAS VEGAS NV 89106

(702) 455-4323

Batch No: EGL

Tran Code: 312

09/19/13 07/01/09 ESCROW ADVANCE

Redacted

Transaction Description:

ESCROW ADVANCE

Proc Date: 09/19/2013

Due Date: 07/2009

Tot Received: \$292.83+

Escrow Pd: \$292.83+

Tran Code: 161

09/19/13 09/01/13 COUNTY TAX

Redacted

Transaction Description:

COUNTY TAX

Disb Check No: WIRE

Proc Date: 09/19/2013

Due Date: 09/2013

Net Disbursed: \$292.83-

Escrow Payee: 27003

CLARK COUNTY

CLARK COUNTY - TREASURER

500 S GRAND CENTRAL PKWY

LAS VEGAS NV 89106

(702) 455-4323

Batch No: EGL

Tran Code: 312

07/25/13 07/01/09 ESCROW ADVANCE

Redacted

Transaction Description:

ESCROW ADVANCE

Proc Date: 07/25/2013

Due Date: 07/2009

Tot Received: \$546.31+

Escrow Pd: \$546.31+

Tran Code: 161

07/25/13 08/01/13 COUNTY TAX

Redacted

Transaction Description:

COUNTY TAX

Disb Check No: WIRE

Escrow Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: Redacted

Borrower Name: HAWKINS, ROBERT M

Proc Date: 07/25/2013
Due Date: 08/2013
Net Disbursed: \$546.31-
Escrow Payee: 27003
CLARK COUNTY
CLARK COUNTY - TREASURER
500 S GRAND CENTRAL PKWY
LAS VEGAS NV 89106
(702) 455-4323
Batch No: EGI
Tran Code: 312

Corporate Advance Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: **Redacted**

Borrower Name: HAWKINS, ROBERT M

12/19/13 PROPERTY PRESERVATION

Redacted

Transaction Description:

PROPERTY PRESERVATION

Disb Check No: 732186

Proc Date: 12/19/2013

Escrow Payee: FSSPI

SAFEGUARD

7887 SAFEGUARD CIR

CLEVELAND OH 44125

(008) 008-5283

Mortgagor Recoverable Corp Adv

Amount: \$14.00+

Corp Payee: 89R01

Paymt Reason Cd: FCIN

Paymt Reason: FC INSPECTION

Tran Code: 631

12/18/13 STATUTORY EXPENSES

Redacted

Transaction Description:

STATUTORY EXPENSES

Disb Check No: 731114

Proc Date: 12/18/2013

Escrow Payee: ATTIEFFANY

TIFFANY & BOSCO PA

STE 300

2525 E CAMELBACK RD 3RD

PHOENIX AZ 85016

(602) 255-6035

Mortgagor Recoverable Corp Adv

Amount: \$400.00+

Corp Payee: 91R11

Paymt Reason Cd: LGCC

Paymt Reason: LIT COURT COST

Tran Code: 632

12/18/13 STATUTORY EXPENSES

Redacted

Transaction Description:

STATUTORY EXPENSES

Disb Check No: 731114

Proc Date: 12/18/2013

Escrow Payee: ATTIEFFANY

TIFFANY & BOSCO PA

STE 300

2525 E CAMELBACK RD 3RD

PHOENIX AZ 85016

(602) 255-6035

Mortgagor Recoverable Corp Adv

Amount: \$281.60+

Corp Payee: 91R11

Paymt Reason Cd: LGCC

Paymt Reason: LIT COURT COST

Tran Code: 632

12/18/13 ATTORNEY ADVANCES

Redacted

Corporate Advance Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: **Redacted**

Borrower Name: HAWKINS, ROBERT M

Redacted

11/22/13 PROPERTY PRESERVATION

Redacted

Transaction Description:

PROPERTY PRESERVATION

Disb Check No: 703740

Proc Date: 11/22/2013

Escrow Payee: FSSPI

SAFEGUARD

7887 SAFEGUARD CIR

CLEVELAND OH 44125

(008) 008-5283

Mortgagor Recoverable Corp Adv

Amount: \$14.00+

Corp Payee: 89R01

Paymt Reason Cd: FCTN

Paymt Reason: FC INSPECTION

Tran Code: 631

10/18/13 PROPERTY PRESERVATION

Redacted

Transaction Description:

PROPERTY PRESERVATION

Disb Check No: 668412

Proc Date: 10/18/2013

Escrow Payee: FSSPI

SAFEGUARD

7887 SAFEGUARD CIR

CLEVELAND OH 44125

(008) 008-5283

Mortgagor Recoverable Corp Adv

Amount: \$14.00+

Corp Payee: 89R01

Paymt Reason Cd: FCTN

Paymt Reason: FC INSPECTION

Tran Code: 631

09/14/13 PROPERTY PRESERVATION

Redacted

Transaction Description:

PROPERTY PRESERVATION

Disb Check No: 634263

Proc Date: 09/14/2013

Corporate Advance Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: **Redacted**

Borrower Name: HAWKINS, ROBERT M

Escrow Payee: FSSPI
SAFEGUARD
7887 SAFEGUARD CIR
CLEVELAND OH 44125
(008) 008-5283
Mortgagor Recoverable Corp Adv
Amount: \$14.00+
Corp Payee: 89R01
Paymt Reason Cd: FCIN
Paymt Reason: FC INSPECTION
Tran Code: 631

08/16/13 PROPERTY PRESERVATION

Redacted

Transaction Description:
PROPERTY PRESERVATION
Disb Check No: 604002
Proc Date: 08/16/2013
Escrow Payee: FSSPI
SAFEGUARD
7887 SAFEGUARD CIR
CLEVELAND OH 44125
(008) 008-5283
Mortgagor Recoverable Corp Adv
Amount: \$14.00+
Corp Payee: 89R01
Paymt Reason Cd: FCIN
Paymt Reason: FC INSPECTION
Tran Code: 631

07/17/13 PROPERTY PRESERVATION

Redacted

Transaction Description:
PROPERTY PRESERVATION
Disb Check No: 572367
Proc Date: 07/17/2013
Escrow Payee: FSSPI
SAFEGUARD
7887 SAFEGUARD CIR
CLEVELAND OH 44125
(008) 008-5283
Mortgagor Recoverable Corp Adv
Amount: \$14.00+
Corp Payee: 89R01
Paymt Reason Cd: FCIN
Paymt Reason: FC INSPECTION
Tran Code: 631

06/19/13 PROPERTY PRESERVATION

Redacted

Transaction Description:
PROPERTY PRESERVATION
Disb Check No: 543976
Proc Date: 06/19/2013
Escrow Payee: FSSPI
SAFEGUARD
7887 SAFEGUARD CIR
CLEVELAND OH 44125

Corporate Advance Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number:

Redacted

Borrower Name: HAWKINS, ROBERT M

(008) 008-5283

Mortgagor Recoverable Corp Adv

Amount: \$14.00+

Corp Payee: 89R01

Paymt Reason Cd: FCIN

Paymt Reason: FC INSPECTION

Tran Code: 631

05/16/13 PROPERTY PRESERVATION

Redacted

Transaction Description:

PROPERTY PRESERVATION

Disb Check No: 510565

Proc Date: 05/16/2013

Escrow Payee: FSSPI

SAFEGUARD

7887 SAFEGUARD CIR

CLEVELAND OH 44125

(008) 008-5283

Mortgagor Recoverable Corp Adv

Amount: \$14.00+

Corp Payee: 89R01

Paymt Reason Cd: FCIN

Paymt Reason: FC INSPECTION

Tran Code: 631

05/04/13 PROPERTY PRESERVATION

Redacted

Transaction Description:

PROPERTY PRESERVATION

Disb Check No: 499556

Proc Date: 05/04/2013

Escrow Payee: FSSPI

SAFEGUARD

7887 SAFEGUARD CIR

CLEVELAND OH 44125

(008) 008-5283

Mortgagor Recoverable Corp Adv

Amount: \$80.00+

Corp Payee: 91R11

Paymt Reason Cd: PPYM

Paymt Reason: YARD MAINTENANCE

Tran Code: 631

04/24/13 PROPERTY PRESERVATION

Redacted

Transaction Description:

PROPERTY PRESERVATION

Disb Check No: 486944

Proc Date: 04/24/2013

Escrow Payee: FSSPT

SAFEGUARD

7887 SAFEGUARD CIR

CLEVELAND OH 44125

(008) 008-5283

Mortgagor Recoverable Corp Adv

Amount: \$14.00+

Corp Payee: 89R01

Corporate Advance Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: **Redacted**

Borrower Name: HAWKINS, ROBERT M

Paymt Reason Cd: CTIN
Paymt Reason: COLLECTION INSPN
Tran Code: 631

04/09/13 PROPERTY PRESERVATION

Redacted

Transaction Description:
PROPERTY PRESERVATION
Disb Check No: 471249
Proc Date: 04/09/2013
Escrow Payee: FSSPI
SAFEGUARD
7887 SAFEGUARD CIR
CLEVELAND OH 44125
(008) 008-5283
Mortgagor Recoverable Corp Adv
Amount: \$80.00+
Corp Payee: 91R11
Paymt Reason Cd: PPYM
Paymt Reason: YARD MAINTENANCE
Tran Code: 631

03/22/13 PROPERTY PRESERVATION

Redacted

Transaction Description:
PROPERTY PRESERVATION
Disb Check No: 452167
Proc Date: 03/22/2013
Escrow Payee: FSSPI
SAFEGUARD
7887 SAFEGUARD CIR
CLEVELAND OH 44125
(008) 008-5283
Mortgagor Recoverable Corp Adv
Amount: \$80.00+
Corp Payee: 91R11
Paymt Reason Cd: PPYM
Paymt Reason: YARD MAINTENANCE
Tran Code: 631

03/20/13 PROPERTY PRESERVATION

Redacted

Transaction Description:
PROPERTY PRESERVATION
Disb Check No: 449321
Proc Date: 03/20/2013
Escrow Payee: FSSPI
SAFEGUARD
7887 SAFEGUARD CIR
CLEVELAND OH 44125
(008) 008-5283
Mortgagor Recoverable Corp Adv
Amount: \$14.00+
Corp Payee: 89R01
Paymt Reason Cd: CTIN
Paymt Reason: COLLECTION INSPN
Tran Code: 631

Corporate Advance Activity 3/1/2013 - 10/8/2014

JPMORGAN CHASE BANK, N.A. — 156

Loan Number: **Redacted**

Borrower Name: HAWKINS, ROBERT M

03/14/13 STATUTORY EXPENSES

Redacted

Transaction Description:

STATUTORY EXPENSES

Disb Check No: 443498

Proc Date: 03/14/2013

Escrow Payee: MG485963

LPS MORTGAGE PROCESSING

LPS PORTFOLIO SOLUTIONS

PO BOX 842651

LOS ANGELES CA 90084

Non Recoverable Corporate Advance

Amount: \$3.50+

Corp Payee: 84N01

Paymt Reason Cd: IPFN

Paymt Reason: FNMA FHLMC TECH

Tran Code: 632



Statement

Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens

FOR IMMEDIATE RELEASE

12/22/2014

Today, the Federal Housing Finance Agency (FHFA) is alerting homeowners, financial institutions, and state authorities of the agency's concerns with state-level actions that threaten the first-lien status of single-family loans owned or guaranteed by Fannie Mae and Freddie Mac. In particular, FHFA is concerned about state actions to create super-priority liens in two instances: 1) through certain energy retrofit financing programs structured as tax assessments and 2) through granting priority rights in foreclosure proceedings for homeowner associations. In issuing this statement, FHFA is acting in furtherance of its statutory obligations as regulator and conservator of Fannie Mae and Freddie Mac.

The existence of these super-priority liens increases the risk of losses to taxpayers. Fannie Mae and Freddie Mac, while operating in conservatorship, currently support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. One of the bedrock principles in this process is that the mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning that they have first priority in receiving the proceeds from selling a house in foreclosure. As a result, any lien from a loan added after origination should not be able to jump in line ahead of a Fannie Mae or Freddie Mac mortgage to collect the proceeds of the sale of a foreclosed property. However, as is detailed below, FHFA is concerned by some liens being advanced to "super-priority" status over Fannie Mae and Freddie Mac first-lien mortgages.

Energy Retrofit Financing Programs Structured as Tax Assessments

While FHFA fully supports energy retrofit financing programs to allow homeowners to improve energy efficiency, these programs must be structured to ensure protection of the core financing for the home and, therefore, cannot undermine the first-lien status of Fannie Mae and Freddie Mac mortgages. Some entities and localities are advancing the argument that single-family energy retrofit financing programs that are structured to make loans through the homeowner's property tax assessment and require that borrowers repay their loans as part of their property tax bill should have priority over all other loans, including pre-existing Fannie Mae and Freddie Mac mortgages.¹ One such program is known as the Property Assessed Clean Energy (PACE) program, which often provides loans as first-liens and is offered in California and in some other states. Localities offering these PACE loans threaten to move existing Fannie Mae and Freddie Mac mortgages to a second lien position and increase the risk of loss to the Enterprises and, by extension, to

taxpayers.

In issuing this statement, FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it. This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan cannot refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage.

Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.

FHFA believes it is important for states and municipalities to understand these restrictions before continuing to offer the programs. Additionally, FHFA believes that borrowers should fully understand these restrictions prior to taking out a first-lien PACE loan.

In addition to aggressive enforcement of these existing policies, FHFA is continuing to explore other possible remedies and legal actions to protect the Enterprises' lien position in response to first-lien PACE programs.

Homeowner Association Priority Status

FHFA is aware that, in certain jurisdictions, liens for unpaid homeowner association ("HOA") dues may be deemed to be senior to preexisting mortgage liens on a homeowner's property. As a result, on December 5, 2014, FHFA and Fannie Mae filed an action in federal court in Nevada, seeking a determination that a HOA's foreclosure sale is invalid and contrary to federal law to the extent that it purports to extinguish Fannie Mae's property rights. *Federal National Mortgage Association v. SFR Investments Pool 1, LLC*, No. 2:14-cv-02046 (D. Nev. December 5, 2014). FHFA has also intervened in *Saticoy Bay, LLC Series 1702 Empire Mine v. Federal National Mortgage Assoc.*, No. 2:14-cv-01975 (D. Nev.), seeking a declaration that a prior HOA foreclosure sale is invalid to the extent that it purports to extinguish Fannie Mae's property interests.

These FHFA actions are based on federal law which precludes involuntary extinguishment of liens held by Fannie Mae or Freddie Mac while they are operating in conservatorships and bars holders of other liens, including HOAs, from taking any action that would extinguish a Fannie Mae or Freddie Mac lien, security interest or other property interest. Specifically, Title 12 USC Section 4617(j)(3) states that "[no] property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency." FHFA is authorized, as conservator, to bring this suit because Enterprise lien interests in collateral constitute property protected by this provision.

FHFA has an obligation to protect Fannie Mae's and Freddie Mac's rights, and will aggressively do so by bringing actions to void foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law.

1 PACE financing programs can be structured as secondary liens that stand behind the original mortgage and do not threaten the priority status of Enterprise loans.

###

The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.6 trillion in funding for the U.S. mortgage markets and financial institutions.

Contacts:

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Statement

Statement on HOA Super-Priority Lien Foreclosures

FOR IMMEDIATE RELEASE

4/21/2015

Title 12 United States Code Section 4617(j)(3) states that, while the Federal Housing Finance Agency acts as Conservator, “[no] property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency.” This law precludes involuntary extinguishment of Fannie Mae or Freddie Mac liens while they are operating in conservatorships and preempts any state law that purports to allow holders of homeownership association (HOA) liens to extinguish a Fannie Mae or Freddie Mac lien, security interest, or other property interest.

As noted in our December 22, 2014 statement on certain super-priority liens, FHFA has an obligation to protect Fannie Mae's and Freddie Mac's rights, and will aggressively do so by bringing or supporting actions to contest HOA foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law. Consequently, FHFA confirms that it has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.

12/22/2014: Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens

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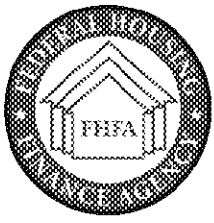
The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.6 trillion in funding for the U.S. mortgage markets and financial institutions. Additional information is available at www.FHFA.gov, on Twitter [@FHFA](https://twitter.com/FHFA), YouTube and LinkedIn.

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Federal Housing Finance Agency

August 28, 2015

Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations

As noted in the December 22, 2014 and April 21, 2015 statements on certain super-priority liens, the Federal Housing Finance Agency has an obligation to protect Fannie Mae's and Freddie Mac's property rights. FHFA will aggressively do so by bringing or supporting actions to contest common ownership association (commonly known as HOAs) foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law.

This statement confirms that FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of the Enterprises to preclude the purported involuntary extinguishment of an Enterprise's property interest by an HOA foreclosure sale.

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency

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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Mark Lemmons, Esq.
Lionel Sawyer & Collins
1700 Valley Bank Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND
GRANT OF EASEMENTS FOR

PEBBLE CANYON HOMEOWNERS ASSOCIATION

HL/6863-157
080891/01/1

9 1 1 1 0 5 0 1 9 6 2

TABLE OF CONTENTS

	<u>Page</u>
1. <u>Definitions</u>	2
1.01 Annexable Area	2
1.02 Association	2
1.03 Association Property	2
1.04 Board	2
1.05 Bylaws	2
1.06 Declarant	2
1.07 Declaration	2
1.08 Development	2
1.09 Eligible Insurer	2
1.10 Eligible Mortgage Holder	2
1.11 First Phases	3
1.12 Lot	3
1.13 Mortgage	3
1.14 Mortgagee	3
1.15 Mortgagor	3
1.16 Owner	3
1.17 Properties	3
1.18 Phase of Development	3
2. <u>Annexation of Annexable Area</u>	4
2.01 Annexation	4
2.02 Notice of Annexation	4
2.03 Deannexation	5
2.04 Other Additions	5
3. <u>Property Rights</u>	5
3.01 Owners' Easements of Enjoyment	5
3.02 Delegation of Use	6
4. <u>Pebble Canyon Homeowners Association</u>	6
4.01 Membership in the Association	6
4.02 Voting	6
4.03 Proxies	7
4.04 Vote Appurtenant to Lot	7
4.05 Notice of Meetings	7
4.06 Quorum	8
4.07 Suspension of Membership Rights	8

9 | 1 | 1 | 0 | 3 | 0 | 1 | 9 | 6 | 2

	<u>Page</u>
4.08 Classes of Voting Membership	9
4.09 Transfer of Membership	9
4.10 Duty of Association	9
4.11 Non-Liability of Members	9
5. <u>Covenant for maintenance Assessments to Association</u>	10
5.01 Creation of Liens and Personal Obligations	10
5.02 Rate of Assessments	10
5.03 Effect of Nonpayment of Assessments; Remedies of the Association	11
5.04 Notice of Assessment	11
5.05 Foreclosure Sale	12
5.06 Curing of Default	12
5.07 Priority of Assessment Lien	12
5.08 Capital Contributions to the Association	13
5.09 Obligations of Declarant	13
6. <u>Architectural Control</u>	13
6.01 Required Approvals	14
6.02 Garages	14
6.03 Roofs	14
6.04 Parking	14
6.05 Front Yards	14
6.06 Animals	15
6.07 Nuisances	15
6.08 Signs	15
6.09 Interpretation	15
6.10 Violations	15
6.11 No Waiver	16
6.12 No Liability	16
6.13 Temporary Structures	16
6.14 Diligently Prosecuting Work	16
6.15 Applicability to Declarant	16
7. <u>Utility Easements</u>	16
8. <u>Insurance</u>	16
8.01 Hazard Insurance	17
8.02 Liability Insurance	17
8.03 Inspection of Policies	17
8.04 Premiums and Proceeds	17
8.05 Bond; Additional Insurance	18
9. <u>Condemnation</u>	18
10. <u>Maintenance and Landscaping Responsibilities</u>	18

9 1 1 1 0 3 0 1 9 6 2

		<u>Page</u>
10.01	Association Property Maintenance	18
10.02	Restoration of Association Property	18
10.03	Owner Maintenance	18
10.04	Right of Entry	19
11.	<u>Rights of Mortgagees</u>	19
11.01	Payments of Taxes or Premiums by Mortgagees	19
11.02	Approval of First Mortgagees	19
11.03	Notice to Eligible Mortgage Holders and Eligible Insurers or Guarantors	20
11.04	Documents to be Available to Mortgagees	20
11.05	Mortgagee Protection	21
12.	<u>Enforcement</u>	21
12.01	Parties Entitled to Enforce	21
12.02	Remedies Cumulative	21
12.03	No Waiver	21
13.	<u>General Provisions</u>	22
13.01	Severability	22
13.02	Amendment	22
13.03	Violation of Law	22
13.04	Delivery of Notices and Documents	23
13.05	Acceptance; Binding Effect	22
13.06	Readings; Construction	23
13.07	Annexation to Association Property	23
13.08	Litigation; Attorney Fees	23
13.09	Declarant's Exemption	23